

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 638

APEX HOSIERY COMPANY, PETITIONER,

vs.

WILLIAM LEADER AND AMERICAN FEDERATION
OF FULL FASHIONED HOSIERY WORKERS,
PHILADELPHIA, BRANCH No. 1, LOCAL No. 706

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 12, 1940.

CERTIORARI GRANTED FEBRUARY 26, 1940.

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VOLUME II

In The
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 19950.

March Term, 1937.

APEX HOSIERY COMPANY**vs.**

WILLIAM LEADER, President of American Federation of Full Fashioned Hosiery Workers (Sometimes known as American Federation of Hosiery Workers), Phila. Branch No. 1, Local No. 706, an unincorporated association, and individually, Joseph Burge, Vice President of said association, and individually, Harry Omeig, Treasurer of said association, and individually, Huey Brown, Secretary of said association, and individually, The American Federation of Full Fashioned Hosiery Workers, (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local No. 706, an unincorporated association, on behalf of itself and all the members thereof.

Sylvan H. Hirsch, Esq.,
Arno P. Mowitz, Esq.;
Harry G. Sundheim, Esq.,
For Plaintiff.

M. Herbert Syme, Esq.,
For Defendants.

After Recess

Present: Counsel as before noted

MR. HIRSCH:

If Your Honor please, I have to apologize for my witness. I asked him to stay after he was finished testifying and look over certain records, and then he had to go and eat some lunch, and he is not back. I told him to be sure to be here at two.

THE COURT:

All right, can we go ahead with something else, or is there anything else we can do?

MR. HIRSCH:

Yes, I will call—

THE COURT:

Maybe he is coming now. No, I guess not.

MR. HIRSCH:

Well, I will call one witness back, meanwhile. Mr. Harper.

J. ALLEN HARPER, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. Mr. Harper, in addition to the testimony you gave this morning will you tell me whether or not you had any conversation with anyone of the sit-

downers in the Apex premises during the period of the sit-down strike, whose name and identity you know?

A. Yes, sir.

Q. First, tell us who it was.

A. Ray Hallstein.

Q. His name is Raymond Hallstein?

A. Raymond Hallstein.

Q. One of the sit-downers?

A. One of the sit-downers.

Q. And you had a conversation with him when?

A. Why, I had a conversation with him twice, once in the yard and once in the supervision office.

Q. What date with reference to June 23rd; I mean, how long before June 23rd?

A. Well, it was two different times. I [guess] just the first time was about three weeks before that.

Q. And when was the last time?

A. Oh, about a week afterwards; in the yard.

Q. And was that during the period when an appeal was pending in the Circuit Court?

A. It was.

Q. Now, will you tell us—but before you answer, in case there is an objection, don't give your answer until the Court has ruled—will you tell us what Mr. Hallstein said to you as it relates to anything on the Apex premises.

MR. SIMONS:

I object, if Your Honor please. I don't know that any conversation with Hallstein would in any way be attached to or attributed to any of the defendants in this particular case.

MR. HIRSCH:

I think, if Your Honor please, that every one of the sit-downers is an agent of the union, having been put there and supported by the union, they are the agents of the union to carry out this purpose, to-wit, to hold possession of the property, and such other motives and purposes as they may have had. I think it is relevant from that standpoint.

MR. SIMONS:

If Your Honor please, I don't believe that every person in the employ of any company or any organization is directly, or indirectly, even, an agent of that particular company or employer. I think it would be going pretty far afield to extend the theory of agency that far.

MR. HIRSCH?

Well, it relates to an act, the conversation will relate to an act which was subsequently done, and we are trying to tie it up to show by whom.

THE COURT:

Of course, I don't know exactly what the testimony is.

MR. HIRSCH:

May I tell you at side bar?

THE COURT:

I think you better tell me what the statement is.

(Discussion at side bar.)

THE COURT:

Well, I will sustain the objection.

MILTON S. STEEPLE, recalled.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Before we proceed further, Mr. Steeple, you answered Judge Kirkpatrick with reference to the inventory shortage by saying you took an average price for the number of dozens you found to be short. Can you tell us whether or not you had any records on your premises prior to May 6th, 1937, which if they had been retained on your premises, or if you had subsequently had them, would have enabled you to fix the actual and specific price of every dozen pair of stockings that were missing?

A. We could have.

Q. And what happened to those records?

A. Those records were destroyed or so disfigured that they couldn't be used, when they broke into the mill on May 6th, and we didn't have them. We could have established the exact price of each style, and thereby the price—

Q. So that the averaging which you did was necessitated by the fact that you no longer had the records—

A. Had the records.

Q. —which you previously had.

BY THE COURT:

Q. What do you mean, the selling price?

A. Yes, we could have established the style—

Q. No, but when you speak of average prices, you mean the selling price,—

A. That is correct,—

Q. —market price?

A. The selling price, based on the styles we were manufacturing.

Q. Is that based on the market?

A. That is the market, yes.

BY MR. HIRSCH:

Q. And you will between now and tomorrow endeavor to break down these items of damage so as to allocate the damage and the cost of repairing the damage which occurred on May 6th, as distinguished from the damage which subsequently occurred?

A. There is quite a few items in here that could be pointed out now that actually took place on May 6th; the glazing item, and so forth.

Q. Well, will you tell us which items they are, now, as to which you have already testified, which cover damage done on May 6th?

A. The glazing.

Q. And the amount—

A. Typewriter repairs.

Q. Well, now, just take the claim itself.

A. Multigraph.

THE COURT:

Let's itemize it.

MR. HIRSCH:

Note the appearance of Mr. Isadore Katz as counsel for the National Association of the American Federation of Hosiery Workers.

THE COURT:

Better let him enter his own appearance.

MR. SIMONS:

I ask that that be stricken.

MR. SYME:

He is perfectly capable of doing it himself.

MR. HIRSCH:

If he participates in the case I think the record should note his participation.

MR. KATZ:

Just a moment, if Your Honor please, I object to Mr. Hirsch entering an appearance for me on behalf of anybody.

THE COURT:

Yes.

MR. HIRSCH:

Well, I object to Mr. Katz appearing in the case unless he does.

MR. SYME:

Mr. Katz is co-counsel with me. Mr. Katz is a member of the bar.

THE COURT:

Suppose Mr. Katz states if he wants for whom he appears.

MR. KATZ:

May I state, Your Honor, I am merely here in an advisory capacity, at Mr. Syme's request.

THE COURT:

You are associated with Mr. Syme?

MR. SYME:

That is right.

THE COURT:

And so far as you represent anyone, you

represent the defendants in this record in an associate capacity?

MR. KATZ:

That is right.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, will you give us the items, please?

A. The front door, new front door.

I can't give you the major, the major part of the time recording, but not entirely, was May 6th.

BY THE COURT:

Q. Major part of the—

A. Time recording, time recording system.

Q. Have you got those in amounts? Have you got them segregated?

A. Yes, they are all segregated, but I will have to break some of the amounts up.

THE COURT:

All right, I will let you do that.

BY MR. HIRSCH:

Q. Can't you do that tomorrow?

A. Yes.

THE COURT:

Yes, do that, and then it may be a matter of some importance to determine how much of this damage you claim was done on the 6th of May.

BY MR. HIRSCH:

Q. Now, then, will you continue with the items of damage which the company had repaired and the amount of money spent in connection therewith, exclusive of the work done by the Reading Textile Machine Works?

A. I think we stopped in the middle there. I think the last item was repair to roof, is that correct?

Q. Mr. Steeple, may I ask a question, and if counsel will permit it, it is an inquiry question: Weren't these figures already broken down into the date of May 6th and subsequently, because I see now additional figures for time recording. I just want to bring that to your attention.

A. These are broken up, I think, from two periods, aren't they?

Q. Well, will you look at the other records there and tell me whether or not I am in error when I say that the items to which you have previously testified were things relating solely to damage on May 6th, and that you are now ready to testify to other items which occurred subsequent to that day, some of which are the same. Look at page 12 and look at pages 8, 9 and 10. Take your time, to make sure, before you answer. I think at my request you broke them up originally.

MR. HIRSCH:

If Your Honor please, just so you may understand, when this claim was prepared I asked that these items be broken down, and I would like now to re-examine the witness.

THE COURT:

All right, you go ahead.

BY MR. HIRSCH:

Q. Mr. Steeple, will you once again look at the claim and your items, and isn't it a fact that at my request you did break down the items of repair into those items covering repair of damage which occurred on May 6th, when the mob broke in, and those items which covered the repair of damage which occurred subsequent to May 6th, but during the pendency and continuation of the sit-down strike?

A. That is correct.

Q. And in the claim that has been filed we have several items that repeat themselves, such as the repair of time recording system, and so forth?

A. That is correct.

Q. Now, then, am I correct in saying that all of the items as to which you have testified previously, giving the name of the item and the amount, covered items of damage to, as Judge Kirkpatrick called it, plant damage occurring on May 5th?

THE COURT:

Occurring on—after May 6th?

MR. HIRSCH:

As to which he has testified as occurring on May 6th.

THE COURT:

Yes.

A. Yes.

BY MR. HIRSCH:

Q. And you have other break downs and figures available for the damage which occurred subsequently?

A. Subsequent to that. The only thing is, the roof item in there, which you have, I think I testified to that roof item.

THE COURT:

Well, you mean the fifty-four thousand dollars which you have testified to was all damaged on May 6th?

MR. HIRSCH:

No, sir.

THE COURT:

Well,—

MR. HIRSCH:

He has so far given the total figures—I will explain to you, if Your Honor please—he has so far given figures totalling—

THE COURT:

Well, he has given one hundred and twenty-one thousand dollars, and of that what we call plant damage was \$54,181.32. Now, how much of that happened on May 6th?

MR. HIRSCH:

And he has given that, sir, and I will give it to you in just a second, the total. He has given the breakdown of those items. He has given items which total \$24,705.83.

THE COURT:

That is May 6th damage?

MR. HIRSCH:

And that represents the May 6th damage to plant and equipment and merchandise.

THE COURT:

Yes.

BY MR. HIRSCH:

Q. Is that correct, now, Mr. Steeple? Check me on that.

A. What was that figure, again?

Q. \$24,705.83.

A. That is correct.

Q. Which is the sum total of the items which you have given us—

A. That is correct.

Q. —heretofore?

A. That is correct.

Q. Now, then, will you tell us the items of damage exclusive of the machine damage occurring subsequent to May 6th for which your company made payments for repairs?

A. Repairs to roof \$ 47.60

Q. Keep your voice up, please.

A. Damaged silk 202.18

Re-processing of soiled hosiery 3792.67

Repairing of time recording system 1218.50

Miscellaneous repairs and replacement of mill equipment 668.19

Miscellaneous repairs to office equipment 1130.91

Repairs to machinery other than knitting machines 1013.31

Cost of labor for repairing the above damage to the plant and equipment 9145.39

Q. Now, the total of those particular items is \$17,218.75?

A. That is correct.

Q. And that covers the moneys actually excepted by your company for the repair of damaged plant and equipment or the re-processing of merchandise occurring during the sit-down strike?

A. Yes.

BY THE COURT:

Q. What is the total?

A. \$17,218.75.

MR. SIMONS:

If Your Honor please, I make my objection at this time also to the presentation of that figure as an item of damage.

THE COURT:

All right. Well, I am going to note it. It will have to be considered, whether that will be submitted or not.

MR. SIMONS:

That is right.

THE COURT:

Well, now, wait a minute, I am sorry, but I haven't got this thing straight. I don't want to waste any more time than I have to, but somehow it doesn't seem to me it has been very clearly presented.

BY THE COURT:

Q. You gave me a total figure of all damage, machinery, plant, everything, of \$121,957.47. That is right, is it?

A. That is correct.

Q. All right. Now, that included damage on May 6th and after May 6th, is that right?

A. Correct.

Q. Then you took out of that \$67,776.15 for your machinery damage?

A. That is correct.

Q. All right, and that leaves \$54,181.32, which is the total of the plant damage, isn't that right? My figures are right?

MR. HIRSCH:

That is right.

THE COURT:

Certainly.

THE WITNESS:

It is a matter of just totalling those various—

THE COURT:

All right.

MR. HIRSCH:

There is still one item to be given in the testimony, and the sum total of the three main divisions will total fifty-four.

THE COURT:

What is the other item?

BY MR. HIRSCH:

Q. In addition to the repairs which were done by the Reading Textile Machine Works to damaged machinery, your company undertook the repair or renovation—

THE COURT:

Oh, yes.

BY MR. HIRSCH:

Q. —of machines which were corroded or rusted as a result of lying idle during the sit-down strike, did it not?

A. That is correct.

Q. And that work you did with your own labor?

A. And our own work.

Q. And your own work, and what was the cost of that item?

THE COURT:

That makes it clear; around twelve thousand dollars.

BY MR. HIRSCH:

Q. \$12,833.11?

A. \$12,833.11.

THE COURT:

Now we are all set.

MR. HIRSCH:

Does that total up, sir?

THE COURT:

Should; I can't add.

MR. SIMONS:

I would like Your Honor to entertain my objection to that last figure as well as to the others.

THE COURT:

Yes, sir, all right, I will note the objection.

MR. HIRSCH:

There is one additional item, now, wait. Well, these figures—we are out around six hundred

dollars on the sum total of these three items, but I think when we get in all of the separate sections—

THE COURT:

All right.

MR. HIRSCH:

—We will know what the total is, and it may be the total figure of \$121,957.47 should be amended by six hundred.

MR. SIMONS:

The total figure instead of sixty-seven thousand, according to the figures I have here, should be \$66,610.58.

MR. HIRSCH:

Well, maybe that is the answer. What is that figure?

MR. SIMONS:

\$66,610.58, instead of your sixty-seven.

THE COURT:

That ought to get it. I don't believe that does it. Well, work that out later, and go ahead.

MR. SIMONS:

We will work out this figure. There is still a difference.

MR. HIRSCH:

Yes, there is still a slight difference.

THE COURT:

Yes.

MR. HIRSCH:

I will work it out. Oh, there is one other item, and then it works out, which is in the claim.

BY MR. HIRSCH:

Q. There is an additional item in the claim, Mr. Steeple, for transporting tools and materials required. How much is that?

A. I have that, \$589.20.

Q. And now if we add all those—

MR. SIMONS:

I object to that, if Your Honor please, also.

THE COURT:

All right.

MR. HIRSCH:

If we add all those items together we will total the \$121,957.47.

Now, if Your Honor please, that completes our proof as to physical damage with the exception of the Reading Textile Machine Works. The rest of the items of damage relate to loss of profits and cancellation of orders, and so forth.

THE COURT:

Yes.

MR. HIRSCH:

It may be more expeditious, or it may not, as you see fit, sir, to have the cross examination as to this element of the damage at this time.

THE COURT:

Yes, I think so. Is he going to testify to the whole thing?

MR. HIRSCH:

He will testify to most of the other items in so far as the books and records are concerned,

yes, but they are separate and apart from this damage, of a different nature.

THE COURT:

Well, I don't know—I don't know whether it will make much difference. Perhaps it will work out a little better the other way.

MR. HIRSCH:

All right. Well, I will continue, then. I think for the purposes of the record it may be that I ought to offer in evidence as a blanket offer all of the original memoranda, invoices, cancelled checks and other data that we have in support of these items, which will then put the defendants in position to completely cross-examine this witness on these various items and also indicate the support which we have—

THE COURT:

Yes, all right.

MR. HIRSCH:

—documentarily of these items..

MR. SIMONS:

May I object to that offer, if Your Honor please? There has been no testimony given here that would indicate that there is necessity for offering ~~all~~ the original books, records and items. We have had general statements as to all of this matter—

THE COURT:

All right, if you don't want them offered we will exclude them at the present time. They are here in court available if you want them.

MR. HIRSCH:

And am I correct in understanding, sir—so there is no misunderstanding later—that this proof has been put in in a way that would expedite the hearing so that the defendant can cross examine this witness on any of these items and make him support them in full detail,—

THE COURT:

Oh, absolutely.

MR. HIRSCH:

—and that I need not ask this witness each particular item of claim?

MR. SIMONS:

I did not so understand it, if Your Honor please. In the matter of going over these particular items my impression was, it was just to get a general picture—

THE COURT:

Well, Mr. Simons, now, tell me what you want.

MR. SIMONS:

Well, I—

THE COURT:

Don't just object, now, tell me how you want to get at this. Now, what do you want done?

MR. SIMONS:

It was my impression he was presenting a general picture, and then going into details,—

THE COURT:

Don't bother about what your impression was. Now, you are objecting to the procedure. Now,

what do you want done? How do you consider that you can best handle the matter?

MR. SIMONS:

Well, I think he should testify as to each particular item of damage and give us the details on that.

THE COURT:

Well, that is going to take five days.

MR. SIMONS:

I know, Your Honor, but we have discussed that in chambers, and we realize and appreciate that these items of damage—

THE COURT:

Oh, but you know that is totally unnecessary. I will permit the testimony to stand with the understanding that the witness has submitted data here—now, I am asking the witness if this is correct—

BY THE COURT:

Q. As to each individual item of damage you have the supporting data showing the cost of the repair, and you can break it down and show the cost of repair to each individual machines, can you not?

A. I can on the—on the damage to the—not the repairs to the machines which remained idle?

Q. No, as to all the other machines.

A. No, I can't—

Q. No, no,—

MR. HIRSCH:

No, he is not testifying as to that.

BY THE COURT:

Q. —I understand you are not testifying as to that, but as to all the plant damage, have you got items as to every dollar that was spent?

A. Yes.

Q. You have items, you can show exactly what it was spent for?

A. Absolutely.

Q. In each case?

A. Absolutely.

Q. You can show what was done to each machine in the plant—

A. Yes.

Q. —by your own company?

A. We have records for that.

Q. You have records for that, and you have records showing how much for broken glass, and each different part of the plant equipment that was damaged?

A. Yes, and the invoices—

Q. And you have the invoices—

A. —and the cancelled checks.

Q. —and the cancelled checks present here in court?

A. Yes.

THE COURT:

All right. Now, then, I will overrule the objection and permit the testimony to stand with that understanding, and if counsel desire it, plaintiff's counsel can offer the data in evidence. As I understand, it was objected to when it was offered, and, therefore, I don't see any reason to put it in, but it is here and it can be used for the purpose of cross examination if necessary.

If you want it in cross examination we will admit it in evidence.

MR. SIMONS:

Well, if that is the manner in which you are approaching to it, yes, we might as well have it in,—

THE COURT:

All right.

MR. SIMONS:

—so we can use it.

THE COURT:

The offer Mr. Hirsh just made is received.

MR. HIRSCH:

Well, then, everything that is here will be considered available.

THE COURT:

Everything that is here covered by the witness's description as in evidence.

MR. HIRSCH:

Now, then, I would like the record to note that the defendant in this case employed the services of Mr. Ladenheim, a certified public accountant, to examine all of these supporting items in connection with these items of repair and damage, and that he was permitted to examine all of them and made such an examination in accordance with the rules of procedure for this court.

Now, is that admitted?

MR. SIMONS:

Well, we have discussed that matter before,

Mr. Hirsch. I don't know why it has to be discussed again. We were permitted to see certain things which we did see, and I assume that we were permitted to see certain bills; and the fact that you spent certain money, but that does not mean that that is proper evidence in this court with which to charge these defendants. I mean, I think it should be clearly understood that any depositions taken before trial are not evidence at the trial—

THE COURT:

Well, they haven't been offered.

MR. HIRSCH:

I am not talking of depositions.

MR. SIMONS:

I know you are making the statement for the purpose of the record and also to indicate to the jury here we have had all this information and we have had an opportunity to see everything. Why do we argue about it now? The answer is, we have not.

MR. HIRSCH:

Come down, Mr. Steeple.

MR. SIMONS:

It is your duty to present it.

MR. HIRSCH:

Come down. I call Mr. Ladenheim.

THE COURT:

I don't believe—no, that isn't necessary.

MR. SIMONS:

That is quite irregular, if Your Honor please.

THE COURT:

No, it isn't necessary.

MR. HIRSCH:

All right, I will call him when I am through.
Come up, Mr. Steeple.

BY MR. HIRSCH.

Q. Mr. Steeple, do you know Mr. Ladenheim, sitting here at the defendants' table (indicating)?

A. I do.

Q. Was he ever—

MR. SIMONS:

I object to that, if Your Honor please. I don't see the relevancy of that.

THE COURT:

I will sustain the objection.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. Now, Mr. Steeple, do you have the record and information here in court which will enable you to tell me the number of dozens of stockings in both the finished and greige stage on hand in your factory premises on May 6th, 1937?

A. I do.

Q. And what was the quantity of finished and greige goods you had on hand on that date? Give us the quantity in dozens of each kind.

A. Finished hose, 25,452 dozen; greige hose, that is, unfinished, 104,665; total, 130,117.

Q. And when you speak of greige goods I think

another witness has explained that to be the stock-
ing which has not as yet been dyed?

A. Undyed and finished.

Q. Now, in the course of your business do you sell both—do you sell women's hosiery both in the greige and finished state?

A. We do.

Q. And did you on May 6th, 1937 have orders, Mr. Steeple, for both greige goods and goods in the finished state?

A. We did.

Q. Do you have the records in court which will enable you to tell us the number of dozens of orders you had on hand on May 6th, 1937 for finished goods, which means dyed, and for the greige goods?

A. As of May 6th?

THE COURT:

Yes, May 6th.

BY MR. HIRSCH:

Q. Yes.

A. We had orders on hand for greige goods of 174,338 dozen; finished hose, 83,796 dozen; total—

Q. And are you—pardon me.

A. Total, 258,134.

Q. And are you in position from the records you have here in court to tell us the dollar value of those orders on hand on May 6th, 1937?

A. I have.

Q. And what is that dollar value?

A. One million—

THE COURT:

Well, just the orders—

MR. HIRSCH:

Orders on hand.

THE COURT:

Orders on hand, the total dollar value.

THE WITNESS:

\$1,433,250.

MR. SIMONS:

At this time also I enter my objection on the matter of presentation of that.

BY THE COURT:

Q. Well, that is the actual price?

A. That is the sale price.

Q. Yes.

A. On the order.

Q. The actual sale price which the buyer had agreed to pay for the goods?

A. Yes, at which the orders had been accepted.

Q. Yes.

BY MR. HIRSCH:

Q. Now, do you have records in court which will enable you to testify as to the number of dozens for which you had orders on May 6th, 1937 unfilled and which orders were subsequently cancelled by the buyer and never accepted?

A. I do.

Q. Can you tell us, of the total quantity of orders on hand for finished and greige goods, which you testified was two hundred and fifty-eight thousand dozen on May 6th, 1937, how many thousand dozen were cancelled?

A. I can.

Q. First, tell us how many thousand dozen were cancelled?

A. 109,310 dozen.

BY THE COURT:

Q. Is that both?

A. Both.

Q. One hundred and how much?

A. 109,310.

Q. All right.

BY MR. HIRSCH:

Q. And do you have the names of the persons who cancelled those orders available, if necessary?

A. The concerns, yes.

Q. And the quantity of each of those orders that was cancelled—

A. I have.

Q. —by those concerns?

BY THE COURT:

Q. Do you have that data?

A. Style, quantity.

Q. Do you have that data here?

A. We have it all here.

Q. You made it all up yourself from the books?

A. Yes.

Q. Examined the books yourself?

A. I have the supporting papers to support it.

BY MR. HIRSCH:

Q. All these records are kept under your supervision and control, are they not?

A. They are.

MR. SIMONS:

My objection goes to that also, if Your Honor please.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, of the orders which you had on hand on May 6th, 1937, totalling two hundred and fifty-eight thousand dozen, are you able to tell us what percentage of those orders was destined for shipment to points outside of the State of Pennsylvania?

A. Eighty per cent.

MR. SIMONS:

I object to that, also, if Your Honor please. I think the latitude here is pretty wide, but just taking dollars and percentages in that manner is certainly not giving any indication of what the actual amount of the damage is: I personally feel that the burden is upon the plaintiff in this case to establish his damage and establish it properly, and I think we are going pretty far afield. I appreciate that it is a rather tedious job, it is a long job; and an arduous one, but I don't see how we can simply take figures of this kind and permit them to go into evidence without having the supporting testimony that would show that they were or were not relevant, and passing the burden on to me to try to find, when I don't know all of their books and records, to try and find from cross examination if it is there.

THE COURT:

Well, what would you suggest?

MR. SIMONS:

Well, I feel—

THE COURT:

—that the witness read the books?

MR. SIMONS:

I absolutely feel that it is the duty of the plaintiff to present each item of damage. They are talking about orders that were cancelled. I don't know anything about their customers, I don't know what the procedure in the past has been with those customers, I don't know, I can't tell—

BY THE COURT:

Q. Well, you made the calculation yourself when you reached that figure of eighty per cent, did you?

A. Yes.

THE COURT:

All right, the objection is overruled.

MR. SYME:

Your Honor, there is another element here. This is a matter that is of vital importance to the union. All we are asking the plaintiff to do is to try his case —

THE COURT:

Surely.

MR. SYME:

—not on estimates, not on conjectures, but try his case. Now, when you say eighty per cent of it went into interstate commerce, there is not only the element of purchases, but there is the element of interstate commerce, which goes to the very heart of this case,—

THE COURT:

Surely.

MR. SYME:

—and merely a conjecture by the witness that it is eighty per cent, without any supporting evidence, and without any development of any testimony by counsel or by the witness, I think is objectionable and highly unfair to the union.

THE COURT:

Well, I don't know what you mean. He has got all the supporting testimony here. He offers it all in evidence.

BY THE COURT:

- Q. Do you have the orders here?
- A. Cancelled orders?
- Q. Yes.
- A. Cancelled orders, or the orders making up the—
- Q. No, the total.
- A. I don't have the—
- Q. Do you have the cancelled orders in court?
- A. I have those in court, yes.
- Q. Yes, the actual orders.
- A. And to establish this eighty per cent I made a listing of all our customers during that season.
- Q. Yes.
- A. And established how many were located in the State of Pennsylvania and how many were outside the State, and I have the statement showing it.

MR. SYME:

Let him produce that.

MR. SIMONS:

This man's statement just now indicates it is not the question of the cancelled orders that indicates the percentage of interstate commerce, but it is rather the amount of business done during that season with his customers.

MR. HIRSCH:

That is the important part.

MR. SIMONS:

No, it isn't.

MR. HIRSCH:

We are showing the thing—

MR. SIMONS:

We are talking about the amount of damage and discussing how much of that went into interstate commerce.

THE COURT:

Well, gentlemen, I don't think I would waste time on it. I think it is a perfectly proper way to prove the case. I will overrule the objection.

MR. SIMONS:

May I just note at this time on the record that it appears to me that the onus of disproving general figures being presented by the plaintiff in this case is falling upon the defendant in the manner of his cross examination. It means that we have to go through all of his books and records at this time in order to disprove the statements that he is making.

THE COURT:

What do you want him to do, Mr. Simons?

MR. SIMONS:

Well,—

THE COURT:

Now, wait a minute, would you suggest that he read the names of all his customers into the record?

MR. SIMONS:

If it is necessary to do that.

THE COURT:

Well, I am asking you whether you think it is necessary to do that. Now, he says that eighty per cent of these goods were shipped outside of Pennsylvania. Now, do you want to sit here for the next half hour and read the names of customers, and then have him take a pencil and add them all up, and then divide by one hundred, and see how many of those are outside of Pennsylvania and how many are inside? It is obviously out of the question and totally unnecessary to do it that way. The witness has made these calculations himself and he is now presenting the results of his figures together with all the supporting data, which is here available for you. It is the proper way to do it, and I will overrule your objection once more. Go ahead.

BY MR. HIRSCH:

Q. Now, of the orders which you had on hand on May 6th, 1937 were you able to use the finished merchandise and the merchandise in the greige which you had on hand on that date to fill those orders on May 6th?

A. As we would have been?

Q. Would have been.

A. Yes.

Q. Were you able to?

A. No.

Q. Why not?

A. Because we were shut down. We couldn't operate.

Q. But were you able to move the finished merchandise and the greige goods against those orders during the period of the sit-down?

A. We couldn't. We couldn't even move the goods that were in our shipping department already packed in shipping containers to go out.

BY THE COURT:

Q. Well, now, for example, you had the finished goods, you had twenty-five thousand dozen, plus, on hand; and you had orders of eighty-three thousand dozen. Now, those orders were all immediately deliverable, or at various periods?

A. Various periods.

Q. Various periods, and was your production such that you could have kept up with your orders?

A. Oh, yes.

Q. You could have filled them all if you had been allowed to operate.

A. Yes.

Q. From May 6th until June 23rd?

A. We could have done it.

Q. Yes.

BY MR. HIRSCH:

Q. Now, with reference to customers, are you familiar with the customers that your company has throughout the country?

A. I am.

Q. Were there any customers who were on your books as regular customers to whom you sold large quantities of goods prior to May 6th, to whom following this sit-down strike you haven't sold any goods all but a small quantity of goods, comparatively?

MR. SIMONS:

Wait a second. I object to that, if Your Honor please.

THE COURT:

Yes, now, don't you think that is a speculative matter?

MR. HIRSCH:

Well, I will prove it through another witness in a manner that will show that it is not speculative.

THE COURT:

Yes.

MR. HIRSCH:

This is the list of customers—

MR. SIMONS:

Well, let's not argue the matter.

THE COURT:

I know exactly what it is, but I just doubt whether it is a proper element of damage.

However, going back to the other question, in view of the statement of counsel for the defense that he is being subject to an undue onus in cross examination, I think I will permit you to show, or to state to the Court, if you don't want to do it in the presence of the jury, what

opportunities counsel for the defense has already had to examine the data.

MR. HIRSCH:

I will state it any way that the Court—

THE COURT:

Suppose you make that statement at side bar, because I want that to appear. I don't want it to appear that I am throwing any hardship on the defense.

(The following occurred at side bar:

THE COURT:

In view of Mr. Simons' statement, I am going to ask Mr. Hirsch to state what opportunities have already been afforded to counsel for the defense.

(Discussion off the record.)

THE COURT:

I am still going to ask Mr. Hirsch to make the statement. If you don't agree to it, just say so.

MR. HIRSCH:

Pursuant to the request of Mr. Simons, who is attorney for the defendant, a Mr. Ladenheim, certified public accountant, was permitted to come to the premises of the Apex Hosiery Company and examine all of the Apex Hosiery Company's general books and records, including ledgers, journals, cash books, all invoices in connection with damage, all payments for damage, all cancelled checks, and he was given everything that we had, with one exception; he was not given the list of

our customers by name, but the total, in view of the fact that the union might use that information—

THE COURT:

Yes.

MR. HIRSCH:

—to our detriment.

THE COURT:

All right, now.

MR. HIRSCH:

But as to that matter we have agreed that Mr. Bachman through his accountant may examine our total as to sales and check the accuracy of it.

THE COURT:

Yes, now, Mr. Simons, have you any comment to make on Mr. Hirsch's statement?

MR. SIMONS:

Yes, they refused to let us see the cash book.

MR. HIRSCH:

You saw everything but the item of salaries, which we refused to divulge.

THE COURT:

Yes,

MR. HIRSCH:

But as to that item we also said Mr. Mulcahy may check that, because we didn't think it was advisable for the union to know that.

THE COURT:

They didn't see the cash book, but the cash book is here now available if they want it.

MR. SIMONS:

How about the general ledger?

THE WITNESS:

General ledger?

MR. HIRSCH:

Did they see it?

THE WITNESS:

They could have. It was available to them.

THE COURT:

It is stated that the general ledger was available and offered to them.

MR. SIMONS:

I am told by Mr. Ladenheim that he did not see the cash book except certain particular items.

THE COURT:

Well, all right.

MR. SIMONS:

I didn't see the general ledger. There was no way of checking back to find out the accuracy of any of the figures. All we have is a copy of those figures that they have set forth in the statement of claim.

MR. HIRSCH:

Let me make this statement for the record. Last Friday I was on the premises of the Apex Hosiery Company, and Mr. Ladenheim was there. At that time he was asking to see the list of salaries for checking purposes. He also asked to see another account. We gave him that other account—I forget the name at the moment—and refused to give the

salaries except through Mr. Bachman. I then called Mr. Syme on the phone, and that was agreed upon. We then asked Mr. Ladenheim whether he had been given access to every book and record that we had for which he asked, other than the item of salaries, and his answer was "Yes".

THE COURT:

Well, all right, if this becomes important at all we can take testimony on it, if necessary. It doesn't need to be in the presence of the jury because it has only to do with the procedure of presenting damages, but it is all right.

(Discussion off the record.))

BY MR. HIRSCH:

Q. Will you tell us, Mr. Steeple, what the total volume of business was for the year 1936 of your company, in dollars?

MR. SIMONS:

I object to that, if Your Honor please.

THE COURT:

Well, again, I don't know why. I imagine he is going to show profits.

MR. HIRSCH:

I am laying the groundwork now for the volume of business that was done;

THE WITNESS:

Is that 1936?

MR. HIRSCH:

1936.

MR. SIMONS:

Your Honor is overruling the objection, I understand?

THE COURT:

Yes: I assume if Mr. Hirsch just asked him what the profit was you would object to that on the ground there was no supporting data, so he is now starting to give you figures on which it can be based, I assume. Go ahead.

A. Total sales in 1936 were \$4,905,743.38.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, then, do you have a record and do you have your books and records in court to submit the question or your answer to the question which I am now about to put to you, as to the total amount of business your company did during the first four months of 1937 and the first five days of May, 1937, both in dozens and dollars? Do you have those records here?

A. The sales records are here, yes, to show the dozens and dollars.

Q. Will you tell us for the period of January 1st to May 1st, 1937 what the total in dozens and dollars was as done by your company?

THE WITNESS:

May 1st!

MR. SIMONS:

May 1st, or 6th?

MR. HIRSCH:

May 1st. I will bring it down, because, if Your Honor please, we will show that the profit calculations which were made by certified public accountants were for—

THE COURT:

All right.

MR. HIRSCH:

—the first four-month period, and then—

THE WITNESS:

What was that question again, Mr. Hirsch, the first four months of 1937?

MR. HIRSCH:

Yes, totals in dozens and dollars.

THE WITNESS:

I have the dollars here. I am not certain I have the dozens. I have those up to May 6th. I can very readily re-set it to May 1st by deducting the May shipments.

BY MR. HIRSCH:

Q. Before you answer, is this the sheet you were looking for?

(A paper was shown to the witness.)

A. I have that.

BY MR. HIRSCH:

Q. Was this sheet prepared by you or me?

A. I have that, but that only shows the sales.

Q. Sales in dollars?

A. I have those here.

Q. Does this show the sales in dollars up to May?

A. That shows the sales in dollars, yes.

Q. In dollars, up to May 1st?

A. That is right.

Q. Do you have a sheet similar to this?

A. Yes, I have that here.

Q. Well, tell us what the sales in dollars up to May 1st were.

A. \$2,220,946.40.

Q. Was that the largest total of sales for the first four months of 1937 larger in dollar amount than the corresponding four months of 1936?

A. Yes, it was.

Q. And was the hosiery business in general throughout the country during the first four months of 1937 larger than in 1936, if you know?

MR. SIMONS:

I object to that, if Your Honor please.

BY MR. HIRSCH:

Q. First, answer, do you know?

BY THE COURT:

Q. Well, have you got data on that?

A. To my knowledge, yes.

MR. SIMONS:

I object to that, if Your Honor please, and ask the answer be stricken from the record.

BY THE COURT:

Q. What is the basis of your knowledge?

A. Reports compiled by the National Association of Hosiery Manufacturers.

THE COURT:

Well, I suppose if counsel demands the original reports we will have to have them, so that I will sustain the objection at this time.

MR. HIRSCH:

I have the president of that association here, so I will cover that with him.

THE COURT:

Oh, yes. Now, you help, too. Don't cover everything twice by two witnesses. If you have got another man to testify what is the use of asking this witness?

MR. HIRSCH:

Well, I only wanted the one question, the general question.

THE COURT:

I know.

MR. HIRSCH:

I wasn't going to ask him details.

THE COURT:

Don't duplicate everything.

BY MR. HIRSCH:

Q. How many dozens did you ship during the first four months of 1937?

A. 404,177 dozen.

Q. And one hundred and seventy-seven dozen?

A. Yes.

Q. And how many dozens did you ship during the first five days or six days, whatever it was, of May, 1937?

A. 11,056.

Q. Now, were there any stockings on hand in your inventory on May 6th, 1937 which were of a seasonable character?

A. Yes, there were.

Q. First, explain in what respects they were seasonable.

A. They were knee high goods, which are considered and are summer style.

Q. Summer style?

A. Summer style.

Q. Yes.

A. We had brown heel goods, which was in the same category. I have the memorandum, I will refer to it.

Q. How many dozens of those goods did you have on hand?

THE COURT:

Now, wait, he wants to look at his memorandum.

A. 10,669 dozen.

BY THE COURT:

Q. Ten thousand—

A. —six hundred and sixty-nine dozen.

THE COURT:

All right.

BY MR. HIRSCH:

Q. After you resumed business operations were you able to dispose of those goods?

A. We were not.

BY THE COURT:

Q. Well, did they go—oh, they didn't go in the cancelled orders, of course?

A. No.

THE COURT:

No, that is all right.

BY MR. HIRSCH:

Q. Did you dispose of some of them?

A. Very few.

Q. And how much below the price for which they could have been sold had you been permitted to conduct your business in the usual and ordinary course were they sold for?

A. I would say about two dollars a dozen less.

Q. And what in your opinion is the value of the goods still on hand of this seasonable character as compared to the value those goods had in May of 1937, when they were in season?

MR. SIMONS:

If Your Honor please,—

A. At least two dollars.

MR. SIMONS:

Wait a second. May I object to the question? I think he is covering several angles of this one thing. First of all, he has asked the question as to how much they sold for less than what they were worth. I don't believe that that is an answer to an item of damage. It is a question of what their value was, what the market value was at the time.

MR. HIRSCH:

I think that is fair.

MR. SIMONS:

He also has not qualified Mr. Steeple as one knowing the market value of the merchandise.

THE COURT:

Yes, I think that is correct.

MR. SIMONS:)

He was qualified as the office manager.

THE COURT:

I think that objection—

THE WITNESS:

I am familiar with the price and the market.

BY THE COURT:

Q. All right, now, what was the price per dozen of these seasonable goods?

A. I may qualify that by saying in addition to my duties as office manager I do sales work, also.

Q. Now, all right, now, what was the price per dozen of these seasonable goods, the market price per dozen, that you had on hand on May 6th.

BY MR. HIRSCH:

Q. At that time what was their market value?

A. I couldn't give you each style separately, I haven't broke that up.

THE COURT:

I think you will have to do that. You can do that by tomorrow, if you want to claim for that item.

MR. HIRSCH:

And also determine by tomorrow the price for which you sold the styles and the value of the styles—

THE COURT:

Yes, I think so. I think Mr. Simons's objection is correct on that.

MR. HIRSCH:

I am agreeable on that. We will determine that figure.

THE COURT:

Yes.

THE WITNESS:

Would that be the market value now or at that time?

THE COURT:

Well, you want the market price as of May 6th,—

THE WITNESS:

As of May 6th.

THE COURT:

—and then the market price of the same things as of June 23rd.

THE WITNESS:

Yes.

THE COURT:

That is what you want, because you weren't prevented from selling them after June 23rd.

MR. HIRSCH:

Well, it doesn't matter what was done with them after that.

THE COURT:

No.

MR. HIRSCH:

Yes.

THE COURT:

Unless the price went up.

THE WITNESS:

As a matter of fact, we have the vast majority of those goods still on hand, for which we are not able to sell—

THE COURT:

Well, your counsel will instruct you on what the proper measure of damages is. Of course, if that loss was all recovered and they sold for more than the market of May 6th there wouldn't be any damages involved, in fact, there would be a distinct benefit.

THE WITNESS:

That don't exist, I assure you.

THE COURT:

Well, I suppose not.

BY MR. HIRSCH:

Q. Now, did you have any materials on hand on May 6th, 1937 which by reason of the fact that you were unable to use them during that immediate season, you were unable to use at all, and sustained

a loss on; and, first, if your answer is "yes", tell us what they were and give us specific details.

A. The answer is, yes.

Q. And what was the material?

A. We had the webbing, which is used in the manufacture of the top of the knee high stocking.

Q. Is that an elastic webbing?

A. An elastic webbing.

Q. Now, tell us how much of that you had and what was necessary or necessitated by reason of this strike trouble.

A. We had on order with the source of supply a considerable quantity of that webbing, and when we shut down, naturally, the season passed for the summer season passed for the knee high goods, and as we had, naturally, that commitment with the source of supply,

Q. And what was the amount?

A. —eventually, eventually we struck an agreement with them whereby we would return to them all of the webbing which we had on hand, which amounted to 46,800 yards, and for which we originally purchased at a cost of five and one-half cents, we agreed to return that to them without any charge; in other words, give it back to them for the consideration of their cancelling the balance of our order.

Q. And the cancelling of the balance of your order was necessitated by the fact that the season for that goods had passed?

A. Yes.

Q. And you had no need for it?

A. That is true.

Q. And the five and one-half cents per yard

was money actually invested by you in this forty-six thousand, eight hundred yards, and lost by you as a result of your returning that merchandise to them without getting anything for it?

A. That is true. I have the copy of the memorandum.

BY THE COURT:

Q. How much does that amount to?

A. I don't have the amount because we returned it, just issued a memorandum invoice, no charge to them.

Q. Well, all you do is multiply five and one-half—

A. Multiply it out, yes.

THE COURT:

Maybe I can do that.

MR. HIRSCH:

\$4,640.00, is that correct?

MR. SIMONS:

No, no.

THE COURT:

No.

THE WITNESS:

No.

MR. HIRSCH:

No, I am wrong, way wrong. I moved my second bracket of figures over too far.

THE COURT:

Twenty-five, something.

THE WITNESS:

\$2,574 is correct.

MR. HIRSCH:

I am sorry; \$2,574.

THE COURT:

\$2,574.

BY MR. HIRSCH:

Q. Do you have with you the books and records which would enable you to tell us the total quantity of merchandise shipped by you during the period May 6th, 1937 to December 31, 1937,—

A. Let me have—

Q. —both in dollars and dozens?

A. Let me have the period again, please.

Q. May 6th, 1937 until December 31, 1937, the actual quantity of goods shipped by you in dollars and dozens.

A. From May 6th?

Q. Correct.

A. 275,799 dozen.

Q. And the total dollar value?

A. \$1,574,904.29.

Q. So that during the first four months of—during the period January 1st to May 6th, 1937,—

A. You have to use April, there. You get May 1st in there again.

Q. —you shipped a total of approximately four hundred and fifteen thousand dozen.

A. From when?

Q. January 1st to May 6th, 1937, you shipped a total of approximately around—

A. Four hundred and five thousand.

Q. To May 6th?

THE COURT:

Oh, no, May 6th.

MR. HIRSCH:

Add eleven thousand more.

THE COURT:

Around four hundred and fifteen.

MR. HIRSCH:

Four hundred and fifteen thousand dozen,—

THE COURT:

That is right.

MR. HIRSCH:

—as compared to two hundred and seventy-five thousand dozen for the succeeding eight-months period, in round figures.

THE WITNESS:

That is right—I don't quite follow you on that there—

MR. HIRSCH:

404, and 11,056 makes approximately four hundred and fifteen thousand, up to May 6th.

THE WITNESS:

That is right.

BY MR. HIRSCH:

Q. The dollar value of which was—

A. Wait a minute; you have them backward,
I think you—

THE COURT:

No, he has that exactly right, it is absolutely right.

THE WITNESS:

That is right.

BY MR. HIRSCH:

Q. And the dollar value of those four hundred and fifteen thousand dozen was approximately two million, two hundred and ninety thousand dollars? Will you figure that up and check me? Oh, maybe I didn't ask you to give the eleven thousand; what was the total sales value in dollars for the 11,056?

A. \$63,207.47.

Q. Therefore, the total dollar value for the period January 1st to May 6th, 1937 was \$2,284,153.

A. Let me get this again, from what dates?

Q. From January 1st to May 6th, 1937.

A. Yes, \$2,284,153.

Q. As compared with the total sales during the last eight-months period of \$1,574,904.29?

A. That is right.

Q. And the reason for the diminution in the amount of business you did and the shipments you made was—

A. Failure to operate.

Q. Pardon me?

A. Failure to operate.

Q. Was it failure, or inability?

A. Inability.

MR. HIRSCH:

Cross examine.

THE COURT:

You have another witness to show the profit? That is to be shown by the C. P. A.?

MR. HIRSCH:

Yes, I have the accountant here who kept the records.

THE COURT:

All right, cross examine.

MR. SIMONS:

If Your Honor please, may I first of all object to the testimony that he has given on the same grounds I have objected before; and I move at this time that all the testimony he has given of a general nature be stricken from the record.

THE COURT:

The motion is denied. I think the Court will recess for ten minutes at this point.

(Recess at 3:10 o'clock P. M.)

MILTON S. STEEPLE, resumed.

Cross Examination

MR. SIMONS:

Are you finished?

MR. HIRSCH:

Yes, there are some other things I will have to get together for tomorrow.

BY MR. SIMONS:

Q. Now, Mr. Steeple, so that we will have a sort of a continuation of where you just left off, you

stated that there had been a decline in the production of your plant at the latter part of 1937, is that correct?

A. Yes.

Q. Now, you stated that you had all the supporting statistics of the National Association to show the business conditions during 1937?

THE COURT:

Well, but he didn't testify to that.

THE WITNESS:

I didn't testify to that.

MR. SIMONS:

He said that before.

THE WITNESS:

I said it was based on that. I didn't testify to that.

THE COURT:

No, but he testified to nothing about general business conditions, that was all withdrawn, and Mr. Hirsch stated he would call the president of the association for that purpose. This witness hasn't testified on that point at all.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. You stated that your loss in business during the latter part of 1937 was due to the fact that you were closed, alone, is that true?

A. Yes.

Q. Now, as a matter of fact, wasn't there a very general slump in the hosiery business during the entire latter part of 1937?

A. No, there was not.

Q. Wasn't there quite a conference held of all hosiery manufacturers during the latter part of 1937 to discuss the very situation of the condition of the hosiery industry?

A. I know of no such conference.

Q. Do you know—did you attend any conferences at all of the National Association of Hosiery Manufacturers?

A. I did not.

Q. And who would attend such meetings if they were held?

A. Mr. William Meyer.

Q. Mr. Meyer? What is that?

A. Mr. William Meyer.

Q. Mr. Meyer, and if such meetings were held you would know nothing about them?

A. No; I wouldn't.

Q. And, therefore, if there was a slump in the market and there was such a meeting for the purpose of discussing that, you don't know anything about it?

A. No.

Q. But if there had been such a slump that might have been the cause for the drop in the amount of sales during the latter part of 1937?

A. If there had been, but there wasn't.

Q. Well, you said you don't know, there had been no discussions as far as you knew?

A. Well, there are other means of knowing that, other than through the statistics. There is trade papers, and my contact with the trade.

Q. Do you have the monthly bulletin of the Association, manufacturers' Association?

A. The company receives that, yes.

Q. The company receives that. Do you have those bulletins here?

A. No, I do not.

MR. HIRSCH:

Well, I happen to have one, although he doesn't know I have.

MR. SIMONS:

No, now, wait a second.

MR. HIRSCH:

All right, that isn't it. We will use it in our case.

BY MR. SIMONS:

Q. Now, your position was just the office manager?

A. General, general office manager. I had other duties, other than just the office.

Q. Well, what other duties do you have?

A. I purchase, I sell.

Q. What do you purchase?

A. Purchase the supplies for the finishing department, the majority of them.

Q. Yes, and what else do you do?

A. I sell.

Q. Well, when you sell, do you mean you go out on the road?

A. Yes.

Q. —or do you sell right from the plant?

A. No, I go out on the road.

Q. Now, on May 6th, 1937, you were in the office how late that day?

A. May 6th?

Q. Yes.

A. Between three and four o'clock, when the sit-down took place.

Q. And you left at four o'clock?

A. Unwillingly, I left.

Q. Well, you left the premises at four o'clock that afternoon?

A. Yes, I had to leave.

Q. And at the time that you left there was quite a crowd around there?

A. Yes, there was.

Q. And you didn't have any opportunity to observe everything that was going on, nor do you know what happened after you left?

A. I surely don't know what happened after I left.

Q. And you never came back to the plant, until when?

A. The very next morning.

Q. And how long were you there the following morning?

A. All the next day, until about five o'clock.

Q. And during that time you were in the office all that time?

A. I was in the office and in—in the wareroom.

Q. In the office and wareroom. The wareroom adjoins the office?

A. That is correct.

Q. And what were you doing there all that day?

A. Nothing.

Q. You mean just sitting around the office and the wareroom?

A. We had one line of telephone open which we were able to put through in Mr. Struve's office, the switchboard having been torn out, and I had three or four people to sit around there, of which I was one, taking the calls that came in over this one line, alternating.

Q. And that is all you did all day?

A. There was nothing else we could do.

Q. Then you left at the end of that day?

A. I did.

Q. And you came back again when?

A. I should judge about a week or ten days later, to get some records.

Q. And you got those records?

A. Yes, I—

Q. And were you—

A. We had to ask the police—

Q. Well, you got the records after you came in?

A. We finally got the records.

Q. You were in there how long for the purpose of getting those records?

A. Oh, say about an hour.

Q. And that was also in the office?

A. Yes.

Q. And then you went out?

A. Yes.

Q. And came back again when?

A. Do you want me to fix a date?

Q. If you can.

A. Well, it was shortly after the signing of the agreement.

Q. You didn't come back there until about July 29th, 1937?

A. That is correct.

Q. Let's say how many days after that?

A. Few days, few days after that.

Q. The 31st?

A. I should say so.

Q. Now, you take an inventory, physical inventory, once a year?

A. Twice a year.

Q. Twice a year, and when do you take it, December 31st?

A. June 1st and December 31st.

Q. And you took no physical inventory on April—on April 30th of 1937?

A. That is correct.

Q. You did or did not?

A. Did not.

Q. Did not, and you took no inventory on May 6th of 1937?

A. Naturally not.

Q. Did you or did you not take a physical inventory on July 31st,—

A. We did.

Q. —1937? Now, who prepared all the figures that you have read to us here today as to the damage done on May 6th and the damage done thereafter? They were your figures?

A. I didn't actually make the entries in the books, no.

Q. No, I don't mean—

A. They were done under my "supervision."

Q. I understand, you have an office force that does that!

A. That is right, and our accountants work on it, also.

Q. But you compiled those figures for their entry into the books?

A. Well, it is just a matter of setting up the books in the first place and passing the invoice. It took the same routine as any other invoices, other than they went into a separate set of books.

Q. And you were the one who determined whether or not the damage was attributable to the occurrence on May 6th, or whether they were attributable to occurrences on a later date?

A. It was up to me to pass the invoices for payment.

Q. And you received in the analysis of these charges as to whether they belonged to the period—or, rather, pardon me—whether they belonged to the damage that occurred on May 6th, or whether they belonged to the group chargeable at a subsequent date?

A. Yes, but there was instructions given—

Q. Instructions given—

A. —that anything—instructions given, that anything that was ordered or was required; that a record was to be kept, and it was to be designated that that was due to the damage.

Q. And you are the one who determined as to what classification it should be placed in?

A. Yes.

Q. Do you have those records for the glazing here?

A. I have the bills.

Q. May I see them?

A. They should be in the top folder.

(Records were handed to the witness.)

THE WITNESS:

Do you want them?

MR. SIMONS:

Yes, if you don't mind, please.

MR. HIRSCH:

You better take all these in case Mr. Simons asks you other questions.

BY MR. SIMONS:

Q. Now, you have handed me the folder showing the glazing of the windows, which is a general item that you have. I will take the first bill that you have here—all right if I take these apart, Sylvan?—and ask you to look at this and tell me what that is about.

A. It is, as it states, for two lights of polished plate glass.

Q. What is that?

A. Two lights of polished plate glass.

Q. Now, you have marked on there one-eighth of an inch polished plate glass?

A. Yes, that is right.

Q. Now, can you tell me when that plate glass was broken?

A. That is a part of the May 6th damage, on May 6th.

Q. No, I asked you when it was broken.

A. May 6th.

Q. How do you know it was broken on May 6th?

A. Because it was segregated in there, the people that went in the plant kept a record of these here and guided me in making the segregation.

Q. Who guided you in making the segregation?

A. Well, Mr. Harper.

Q. Yes, who else?

A. Mr. Struve.

Q. Yes.

A. Mr. Harper, through Mr. Struve, and the various other people that made the repairs.

Q. You mean the Pittsburgh Plate Glass guided you in this matter?

A. No, men in our plant, not the Pittsburgh.

Q. And they told you what, to what period they belonged?

A. Yes, they did.

Q. You personally had no knowledge of it at all?

A. Well, we had—we had a record—

Q. I am talking about you personally.

A. Well, I saw some of the plate glass, I saw the office plate glass broke.

Q. Well, now,—

A. The next day.

Q. —you couldn't say that all of these bills for plate glass and glass were for breaking on May 6th, you personally couldn't say that?

A. I couldn't say it—I didn't see every one of them broken, I didn't see every one of them put in.

Q. Now, you have—

A. Any more than I see everything that comes into our plant, that I have got to approve.

Q. Therefore, you personally don't know whether or not any of this glass was broken on May 6th?

A. Oh, yes.

Q. Or, rather, I should say whether all of this glass was broken on May 6th, or broken on some other day.

A. It would be broken on May 6th. I was in the plant on May 7th.

Q. Could you testify from the stand that every item of glass that you have in this folder was broken on May 6th? Would you want to swear to that?

A. Well, I would have to—this has been two years ago—I would have to refresh my memory on that.

Q. Well, you have been testifying about it all day. You have had ample opportunity to think about it.

A. Well, I have had other things to think about, too, figures. I would say—

Q. Would you swear—

A. I would say to the best of my knowledge all of that there items that are in that folder there, representing that item, was damage due—that took place on May 6th.

Q. And you say that despite the fact that you were there until four o'clock that afternoon and left, and didn't come back until the following day, and remained in the office all that day and didn't go outside at all?

A. That is right.

Q. And what do the other notations on this bill indicate?

A. The other notations, the price and the discount, extension.

Q. It indicates stamped on there?

A. Stamped where?

Q. All those stamps.

A. Those stamps that appear in there?

Q. Yes, everything.

A. Date it was paid, stamp, insurance claim account, and entered.

Q. And the same thing appears on all of these other items?

A. Yes, it does. That is only our methods of keeping these accounts separate.

Q. You mean you kept these payments separate from your other business?

A. Yes.

MR. SIMONS:

May I mark the whole folder for identification at this time?

MR. HIRSCH:

Will you give all these books and records a general number, and then he can mark anything he wants.

MR. SIMONS:

We have had D-1. I will mark this D-2.

MR. HIRSCH:

All right.

(Books and records generally were designated Exhibit P-17.)

(Folder relating to glazing repairs and supplies was marked Exhibit D-2 for identification.)

BY MR. SIMONS:

Q. Now, all the figures that you have given us today are for moneys that you claim that the company has expended?

A. That is correct.

Q. Now, as a matter of fact, you have been reimbursed for all that, haven't you?

MR. HIRSCH:

That is objected to. Mr. Simons knows that is a highly improper question. Yes, we were insured for some of this damage, if that is what he wants to know, and I still think it is an objectionable question, and he knows better than to ask it.

MR. SIMONS:

Mr. Hirsh, we have all this evidence here. There is nothing that has to be hidden from the jury.

MR. HIRSCH:

We are not hiding anything.

THE COURT:

Well, now, gentlemen, members of the jury, the question of whether or not the plaintiff was insured has absolutely nothing to do in fixing the damages. You are to fix the actual damages that occurred, without regard to whether any of them were covered by insurance or whether they were not. The question was an improper question and—

MR. SIMONS:

I didn't ask it for that purpose, if Your Honor please.

THE COURT:

I don't care for what purpose you asked it.

MR. SIMONS:

There were separate records kept, and there

were notations, I thought we might as well get it in to see why these records were kept.

THE COURT:

Mr. Simons, I am not asking for any explanation. I am stating to the jury the question was an improper question. I should think you would have known it. If you didn't, that is all right, I will accept your statement, but the jury, will not regard the question of insurance at all in this matter. It hasn't anything to do with it. It doesn't reduce the damages or affect the damages in any way.

MR. SIMONS:

There is no doubt about that, Your Honor.

THE COURT:

All right, now, we all agree to that. Now, let's go on to the next thing.

BY MR. SIMONS:

Q. By looking at these bills can you tell us where this glass had to be replaced?

A. No, I couldn't.

Q. What?

A. No, I couldn't.

Q. Well, is there any way—

A. Not by looking—

Q. —any way that you could find out, by these bills or any other information that you have on hand, as to where this glass was replaced?

A. I suppose we still have records that show where, exactly where it was placed. I can't say, if we bought six table tops, where each table top went on, glass table top, I can't say that. We tried

to group this stuff together to get the plant in shape as quick as we possibly could. We wasn't trying to set up any histories on it.

Q. Therefore, as far as you know, this is the money that you have expended for glass, but you don't know just where or how it was applied, or what happened?

A. The major portion of that, I know, went into the windows.

Q. Yes, well, I say, outside of the fact that this is money expended for glass, I mean, you can't from just looking at the bills tell us to what in particular it applied?

A. The majority of it I can, there.

Q. Where it is specifically mentioned?

A. The majority portion of the bills of the Pittsburgh Plate Glass is the glass, and the other bill for labor is placing the glass in the broken windows.

Q. Well, just for the purpose of clarifying the matter for a second, only, without spending any more time, you have one-eighth inch polished plate glass. You wouldn't know where that went?

A. No, that is a small item.

Q. A small—

A. I would know where the major items went, though.

Q. You have a number of glass windows throughout the whole building, don't you?

A. That is true.

Q. And in the ordinary course of business as it goes on there are breakages in the various glass?

A. Oh, I suppose there is, occasionally.

Q. I mean, you have had occasion in the past to repair some windows, put in new glass?

A. I suppose so. Glass will break.

Q. And glass cracks sometimes?

A. I suppose so.

Q. And there may have been some cracked glass at the time on May 6th, 1937?

A. I wouldn't say that there would be cracks. It is usual to take out cracked glass.

Q. You don't know definitely whether there were or were not?

A. I couldn't say whether there was one cracked pane of glass in the building, no.

Q. Or whether there were more than one, you don't know?

A. No.

BY THE COURT:

Q. Can you say there was a negligible amount, if any?

A. No, there was not.

MR. HIRSCH:

You didn't hear the Judge.

THE WITNESS:

Maybe I misunderstood you.

BY THE COURT:

Q. Well, can you say that if there was any cracked glass in the building at the time on May 6th, before the mob came in, the amount was so small as to be negligible?

A. Yes, I could say that.

THE COURT:

All right.

BY MR. SIMONS:

Q. May I see the one for the plumbing repairs and supplies?

A. Plumbing?

Q. Yes, please.

(The witness produced the folder.)

BY MR. SIMONS:

Q. As far as the question of the bills here for the plumbing repairs and supplies, I mean, your knowledge as to the occurrences, and when they occurred, and just what happened, would be the same as the glazing?

A. That is true.

Q. So we don't have to go over all of that testimony?

A. Yes.

Q. And all you know is that these bills were presented and were paid?

A. I know that the work was performed.

Q. Yes, and they were presented and were paid?

A. Yes.

Q. You know nothing about each particular item?

A. Each detail.

Q. You didn't check it before, nor did you check it after that?

A. I approved the bills, after they had been checked by the person that supervised.

Q. But as far as the mechanical work was concerned—

MR. HIRSCH:

Let him finish his answer.

BY MR. HIRSCH:

Q. You did what?

A. I checked the invoice after the person who actually saw the work performed assured me that the work had been performed in accordance with the invoice.

BY MR. SIMONS:

Q. And you just took the perfunctory—you have the business of checking these invoices and making sure they should be paid, you had no personal knowledge as to these items that appear on these invoices except the fact that someone told you that that was the fact?

A. Well, particularly in this plumbing, that would possibly be true. There are a lot of the things that I directly let the contract for, as I stated before.

Q. Well, that is not true as far as plumbing or as far as glazing?

A. Not every individual item on there.

MR. HIRSCH:

Well, wait, as far as glazing, it is.

MR. SIMONS:

He didn't say that.

THE WITNESS:

Yes, I let the glazing contract myself.

BY MR. SIMONS:

Q. You let that yourself?

A. I let that myself, after much difficulty.

Q. May I see the hardware repairs and supplies?
(The witness produced the folder.)

BY MR. SIMONS:

Q. Now, the payments for the hardware repairs and supplies were also done under your supervision, is that right?

A. Yes.

Q. Now, taking this first bill that you have here, I ask you to look at this and tell me what this is all about.

A. What do you mean by what it is all about? I don't get it.

Q. Well, now, there is a bill in your group here. Explain it to me. I can't understand it.

A. This is material—

Q. I can't read that bill.

A. The material on this bill, this invoice, is material which the men in the plant who had charge of making these repairs ordered.—

Q. Who ordered it?

A. —to make those repairs. They were ordered in the regular, routine manner.

Q. Who ordered it?

A. This would possibly be ordered by—

Q. No, do you know who ordered it?

A. Mr. Struve would possibly order this.

Q. Well, now, did Mr. Struve order that?

A. I didn't order this directly, no.

Q. Do you know who ordered it?

A. Mr. Struve would order it.

Q. Well, did Mr. Struve order it?

A. Yes.

Q. Did Mr. Struve order that particular bill, that merchandise?

A. Yes, I should imagine he would.

Q. I am asking you if you know. If you don't know, say so, if you are not sure.

A. Well, he would be the only one who would be authorized to order, that is the reason I state Mr. Struve would order it.

Q. Is there anyone else who might have ordered it?

A. No one else was authorized to order any material.

Q. And you think that Mr. Struve was the one who ordered the materials on that bill?

A. Yes.

Q. May I have that? This bill calls for one-eighth quart galvanized water pot, and eighteen rubber erfitch tips, two pc.—I don't know whether it is two per cent—9 by 9 alum., six dozen snaps, three special panel, and several other items. Do you know what this applied to?

A. I do not, other than that it was passed through for payment by the people that done the repairs.

Q. And you checked it?

A. Yes, I checked with them.

Q. And that is all you know about it?

A. That is right.

Q. And the same will apply to the other bills here?

A. Yes, I suppose so.

MR. SIMONS:

Will you mark this for identification, and this one, too?

(Folder relating to plumbing repairs and supplies was marked Exhibit D-3 for identification).

(Folder relating to hardware repairs and supplies was marked Exhibit D-4 for identification).

BY MR. SIMONS:

Q. May I have the electrical repairs and supplies, please? Look, why don't you let me have them here? I will put them on Mr. Hirsch's desk,—

A. That is fine.

Q. —and then they won't be bothering you.

A. There they are.

Q. I will take them one at a time. Was the repairing of this electrical work under your supervision and care?

A. Indirectly, yes.

Q. What was that?

A. Indirectly. The bills came through to me O. K.'ed.

Q. Now, get it straight,—

A. Not the work itself.

Q. Get it straight, so I don't have to ask too many questions on all these and prolong it unnecessarily. I am not now referring to the matter of payment.

A. Yes.

Q. I think we understand each other, all payments were made by you, and after you were told to pay the bill. Now, what I am asking is whether you know personally about the work that was done, this electrical work that was done.

A. No, I don't. Mr. Struve would also be the one to testify on that.

Q. You know nothing else about this bill except that it was paid?

A. That it was assigned to that part of the work.

Q. Mr. Struve told you to pay it?

A. Yes.

Q. As a result of which you paid it?

A. Yes.

MR. SIMONS:

I ask that that be marked for identification.

(Folder relating to electrical repairs and supplies was marked Exhibit D-5 for identification.)

BY MR. SIMONS:

Q. Well, now, let me ask you, maybe we can shorten this whole thing, does the same situation apply to all of the bills which you have here?

A. No.

Q. All right, well, let's take them one at a time. How about this painting bill? Do you know anything about that?

A. That would be in the same category.

MR. HIRSCH:

Let him look at all these files, and ask him—

BY MR. SIMONS:

Q. You know nothing about the painting bill personally except you were told to pay it?

A. I will answer "yes" or "no"; no, no.

Q. You mean you don't know anything about it?

A. No, don't know.

Q. All right. How about this new front door?

A. I know about that.

Q. What kind of a door did you have, front door, did you have there before?

A. Very same type of door we had replaced.

Q. And to furnish and erect the door was eighty-eight dollars, is that correct?

(A bill was shown to the witness.)

A. I don't think this is the entire bill.

BY MR. SIMONS:

Q. Well, now, we are talking about the front door. You gave—

A. I mean, the entire bill for the front door. I think this only includes the trim.

Q. Well, now, will you read that bill? What does it say?

A. Furnish and erect two Kal., 102-P, 3 by 7 approximate, 2 Kal. frames, forty foot, forty foot, four inch trim, \$88.00, but it is my recollection that the door cost more money than that.

Q. Yes, I will get this other bill in just a second.

A. If I recall correctly, it was somewhere around \$274.

Q. Well, now, what did this refer to?

A. Well, the trim all around on the outside of the door was broken, too, not only the door, the molding around.

Q. Well, don't you have to put the trim in before you could put the door in?

A. Absolutely.

Q. And is this the bill you were referring to about the door itself?

(A bill was shown to the witness.)

A. Yes.

BY MR. SIMONS:

Q. And that was put in when?

A. Approximately the date of this invoice.

Q. August 20th?

A. Yes.

Q. So first they put the door in, and then on September 28th they put this other bill in of the \$88.

A. I don't think so.

Q. Well, the bills are dated different dates, aren't they?

A. They may be. They may have rendered a bill later on.

Q. In other words, you mean they rendered a bill for the trim after the door was in?

A. That is possible.

Q. Yes.

A. But I am sure they didn't do the job back-words, I know that.

Q. But it is quite possible that you may be mistaken as to just what these bills represent?

A. No, sir. I can definitely identify those bills as being the cost of replacing the door and the molding around the door.

Q. Now, this bill shows that on August 20, 1937 they furnished and erected a pair of skat. doors, whatever that may mean.

A. I can't tell for certainty, but it may be they rendered those doors--possibly the invoice was rendered and the doors not shipped right away.

Q. Well, now, this bill was paid August 25th?

A. Yes.

Q. That is marked on there, is that correct?

A. That is right, it was paid August 25th. I didn't say definitely—

Q. Then you wouldn't have paid the bill unless it was actually there and installed?

A. Well, the only thing I can state, I can identify those invoices as being the cost of replacing the doors, the new doors.

Q. Well, is there any doubt in your mind that this one hundred and eighty-six-dollar bill which includes, incidentally, a charge of twenty-six dollars extra for finishing, painting and graining?

A. I know about that.

Q. Yes.

A. Our previous door was finished in oak, and the door came through with the prime coat on it, and it had to be finished the same as—as the molding was, part of the molding, and same as we had had it before. We were trying to replace the things as they were before May 6th, and we replaced the door and had it grained the same as it was before.

Q. Well, there is no doubt in your mind that when that door was put in and completed, and you paid for it, the door was in?

A. Right.

Q. And if there was any bill rendered subsequently, more specifically on September 28, 1927, and paid on October 6th, it could not have referred to the trimming or anything on the front door?

A. Well, I would have to refresh my memory about this, this part of the bill, but I am certain that this was all—I am quite certain that this was all part of the front door equipment.

Q. You still think that this is part of the front door equipment, and you paid twice for it?

A. As far as I can recall. It has been two years ago. I can't remember everything from that date.

Q. There is no doubt the door was installed at one and the same time, and was paid for?

A. Well, it seems—it seems to me that there was another door, too, damaged, inside the plant. I won't say for certain, but I could check that.

Q. Now, what did you have to do with this particular item of damage?

A. I ordered the door.

Q. You ordered the door?

A. Yes.

Q. And that is all you know about it?

A. Yes, other than that I ordered it and saw that.

Q. Saw that it was paid?

A. That it was installed, and that the bill was paid.

Q. Now, you have here repairs to time recording system. What do you know about these repairs?

A. I had those repairs made.

Q. When you say you had them made, did you order the making of these repairs?

A. I ordered the repairs, yes.

Q. Or were you simply told to pay for them?

A. I negotiated with the company to repair the time recording.

Q. And these negotiations were carried on when do you remember?

A. I don't remember the dates.

Q. I mean, I will give you the bill.

A. Yes.

Q. This might refresh your memory.

(A bill was shown to the witness.)

A. Negotiations took place, of course, before the invoices.

BY MR. SIMONS:

Q. Well, that is why I am asking you.

A. They got it, and developed an estimate of the repairs to the machines, to the clocks, and so forth.

and then there was an estimate, and rendered these bills.

Q. Well, now, give me an approximate idea as to when you first negotiated with regard to the repairs to the equipment; to that particular equipment.

A. Shortly after we got into the plant.

Q. Some time—

A. After July 29th.

Q. That would be some time in August?

A. Yes, the early part of August, yes, that would be correct.

Q. Now, the earliest bill you have is on August 25th?

A. That is right.

Q. And how long before that would you say that you negotiated with them?

A. Well, I—I got in touch with them before we even got back in the plant, to get the things set, so that when we did get possession of the plant that they could make that estimate and make the repairs.

Q. Well, how long before August 25th did you negotiate in this matter?

A. Oh, I would say at least several weeks before that.

Q. Several weeks?

A. Yes.

Q. When these repairs were made was there any change made in the type of system that you had there?

A. I would say not. I believe that it was the same.

Q. Well, are you certain of that, or are you just assuming?

A. I am not absolutely certain of that.

Q. In other words, they may have made some

changes in the system while you were making the necessary repairs?

A. I don't think so.

Q. Now,—

A. Unless—unless we had a—there may be some little difference, the clock was a little different from ours, it may have been the next year model or something of that sort, I don't know.

Q. Now, how long had this time recording system been in operation in your plant, do you know?

A. At different intervals. In one plant it would have been in, judging from when we erected the building.—

Q. From the time—

A. —about 1927, '28, somewhere around there.

Q. Therefore, at the time of this occurrence it had been there at least ten years?

A. Well, not at least ten years, say around—

Q. Well, some of them had been there for ten years, I mean, over a period of ten years.

A. As far as my recollection, I am only basing that on if we put the clocks in there when we built the plant. It may be we installed them later. That I couldn't state at this time, without consulting our original invoices.

Q. A great deal of expense on this was cleaning, oiling and adjustment of movements.

A. I think you will find there had to be replacement of some of the movements.

Q. And some of them are installing necessary parts.

A. Yes, they had their man come on the premises to do some of the work, to get some of the clocks in order, so we would be in position to at least have our employees ring in and ring out on some of the

clocks. Some had to go away, be sent away, and others had to be replaced.

Q. Now, you have a bill here, style number 4577, two power unit, twenty-four volts, d. c. Is that a new piece of equipment that you put in there?

(The bill was shown to the witness.)

A. What do you mean, new, it wasn't a replacement of something?

BY MR. SIMONS:

Q. Yes.

A. Of the same thing? That is new because that is the only thing available to put back.

Q. That is new?

A. Yes, that is new, but it was replacement of the damaged box that was in there, and damaged.

Q. Now, did you spend any money in repairing, oiling, adjusting or cleaning these machines at any other time?

A. They were kept in repair, yes.

Q. And do you have a record to show the cost of your repairs on these matters?

A. I do not.

Q. Well, weren't they part of the expenses that were deducted as part of your operating expenses?

A. Well, we don't keep that separate, the oiling of time clocks.

Q. Well, I mean the oiling and cleaning and adjusting of them.

A. No, we have a regular system for taking care of all our machinery. They are periodically oiled and cleaned, and so forth, motors and everything else.

Q. Did this company ever do any work on these machines?

A. What is that?

Q. Did this International Business Machines Corporation do any work on these clocks at any time?

A. Oh, they may have made minor repairs, if something went wrong, I couldn't say that, over a period of years.

Q. There were occasions when you had to make these minor repairs?

A. I say, I am not certain.

Q. Did you carry these clocks as an asset?

A. That I couldn't say. They certainly were an asset.

Q. Did you allow any depreciation on these clocks?

A. Oh, yes.

Q. Will your records indicate that?

A. I don't know whether we carried those separate clocks in a separate item. They went into fixtures, I should imagine.

Q. Well, will you look at your records and let me know?

A. I couldn't tell by my records here today.

Q. You couldn't?

A. Nor not that they were actually put in as a separate—in fact, I am certain they wasn't put in separately.

Q. Were they grouped?

A. —although they may be in our plant ledger.

Q. Do you have your plant ledger here?

A. The plant ledger is here.

Q. May we have the plant ledger?

(The witness produced the ledger.)

* BY MR. SIMONS:

Q. Will you see if you can find it here.

(The witness examined the ledger.)

A. It would appear that it was carried under fixtures, and not segregated.

BY MR. SIMONS:

Q. Now, that would be in your fixture account?

A. Yes.

Q. Do you have your general ledger here?

A. General ledger is there.

Q. Would it show in your general ledger?

A. It wouldn't show in the general ledger as an individual item, because the postings in the general ledger are from the disbursement book.

Q. Well, your assets appear in your general ledger, and under Furniture and Fixtures you would have some notation as to when they were purchased,

A. Not this particular machine.

Q. —when it was paid for?

A. It would be posted from the—from the disbursement book as a complete total at the end of the month in which they were purchased.

Q. Well, wouldn't you mark in the ledger just what the item was for?

A. Not necessarily.

Q. Well, can we see your general ledger, look at it?

A. Yes.

Q. And then we won't have to guess at it.

A. It is right here.

MR. HIRSCH:

Pick it out, Mr. Steeple.

A. It is the top book, again—no, this one, this side. This is '37. Do you want that?

MR. SIMONS:

Yes, yes, I want to check that account.

THE WITNESS:

I am certain that this ledger will not show time clocks purchased a certain date, at so much money, because it would appear—

MR. SIMONS:

Well, let's see the account and then we won't have to guess at it. That is the easiest way.

(The witness examined the ledger.)

MR. SIMONS:

Let me look at it.

THE WITNESS:

Wait a minute.

(Discussion off the record.)

MR. SIMONS:

Well, let it just be noted that the ledger, general ledger, only goes back to 1931, and Mr. Steeple says he didn't bring all his records here, and it doesn't appear as a separate item.

MR. HIRSCH:

You want the books ahead of '31?

THE WITNESS:

That information can be secured if it is essential, if it is required.

MR. HIRSCH:

I object to anything preceding 1931. I think that is a little irrelevant.

MR. SIMONS:

I feel we have the right to check on the ques-

tion of the value of it, and I may want to see what the actual cost of those time clocks was.

THE COURT:

See if you can do that.

MR. SIMONS:

Now, in order to be accurate about it, I will ask that you obtain it for me.

MR. HIRSCH:

Mr. Steeple, will you do that; please?

MR. SIMONS:

Mr. Steeple says he can get it. I would like to have it.

THE WITNESS:

I should imagine I could get it.

MR. HIRSCH:

You are entitled to it, then. Go ahead.

BY MR. SIMONS:

Q. How do you figure your depreciation on this? I can't figure fast enough here.

A. What do you mean, how do we figure?

Q. What percentage do you figure depreciation per year?

A. On fixtures?

Q. Yes.

A. About five per cent—our accountant will be able to testify to that more clearly than I am.

Q. You figure depreciation at least five per cent?

A. Yes.

Q. And that, of course, is deducted each year as you go along, at the end of the year?

A. That is true.

Q. From the value of the particular asset as set up here?

A. That is true.

Q. And if any of these items were ten years old, why, then they have depreciated at least according to your records in their value at least fifty per cent.

MR. HIRSCH:

That is objected to if you add "their value". I have no objection to the question as to the records. In other words, as a matter of book-keeping they may have depreciated five per cent, or three, or ten. That doesn't determine whether they have any value, necessarily. They may be less valuable or more valuable.

BY MR. SIMONS:

Q. Now, you have another bill here for \$1,266.75, which is also for new time clocks and new material that you bought, is that correct?

(The bill was shown to the witness.)

A. They weren't new. They were replacements.

Q. Well, they were new items?

A. Well, they had to be. The others were damaged.

Q. Yes.

A. Beyond repairs.

Q. Well, you don't know that?

A. I do know that.

Q. How do you know that?

A. I saw the clocks.

Q. Do you know anything about the clocks?

A. I saw the clocks.

Q. Do you know anything about clocks?

A. I am not a clock maker, but I can see—

Q. All you know is what you have been told?

MR. HIRSCH:

Let him finish his answer.

A. (Continued) All I know is what I see, and I saw the master clock completely demolished in the office, and the other clocks, too.

BY MR. SIMONS:

Q. And all you know is that you asked this company, the International Business Machines Corporation, to repair them?

A. If it was possible to repair them.

Q. And they told you to buy the new clocks?

A. Absolutely, said it was beyond repair.

Q. And you have no estimate for the repairs of those machines, do you?

A. I don't know, offhand. I think that—I think I have.

Q. Do you have that here?

A. I don't think they are here, no.

MR. SIMONS:

I ask that these be marked for identification.

(~~Folder relating to repairs to time recording system was marked Exhibit D-6 for identification.~~)

BY MR. SIMONS:

Q. You have a file here, repairs and replacements to fixtures, \$3,500.00. Can you tell us what this is about?

A. This was the labor, our own labor, that was—labor cost in repairing—

Q. Well, now, all you have here is just a piece of yellow paper with some notations on it in red pencil?

A. That is right.

Q. That is all?

A. That can be supported by the—

Q. Well, now, that is what I want to know. What can it be supported by?

A. It can be supported by reports and the wage book in which we paid our employees these wages while we were making these repairs.

Q. Let's see them.

BY MR. HIRSCH:

Q. Now, what book do you want?

A. What?

Q. Which one do you want?

A. I don't know, now.

Q. Well, go ahead, look over here.

MR. HIRSCH:

Does Your Honor object to Mr. Langer, the certified public accountant who worked with Mr. Steeple, helping him get this information?

MR. SIMONS:

Oh, yes, if Your Honor please, I feel here the man is testifying. Here the items of damage are most important.

MR. HIRSCH:

All right.

MR. SIMONS:

I don't think anyone else should do that.

MR. HIRSCH:

I withdraw the suggestion of having it expedited. I wanted to help, that is all.

You can stand there and testify.

THE WITNESS:

I would have to ask the accountant's support on this, because he has the schedule, and I don't have it in here. I can't testify from this here.

MR. HIRSCH:

I don't know what you mean. He has a schedule in addition to that?

THE WITNESS:

Yes, on this—on this here claim it should be understood that my duties at the office would not permit me to put my whole time in on keeping these records, and, therefore, the accountants was employed to do that. I will be glad to testify all that I can to my knowledge, but the accountants are in a better position on these items of this nature to testify.

BY MR. SIMONS:

Q. Therefore, you personally know nothing about—

A. And will be able to do it more quickly than I can.

Q. All right, you personally know nothing about—

A. More completely—

Q. You personally know nothing about that item?

A. —than anybody here. I know about it; but I can't give the detailed figures.

Q. You have no personal knowledge or anything about it?

A. No, I do have personal knowledge about it, but I can't give you the details.

Q. You can't support this item in any way?

A. The accountants can. I can't support it other than tell you what it was for.

MR. SIMONS:

Mark that for identification.

(Folder relating to repairs and replacements of fixtures was marked Exhibit D-7 for identification).

THE COURT:

Well, it may be that we will make better time if we adjourn at this point, and let you go over this so that you will be ready tomorrow morning to go ahead with a little more expedition. Suppose we adjourn. I might see counsel for just a few minutes in chambers, if they will come in.

Adjourned until ten o'clock tomorrow morning.

Adjourned until Thursday, March 16, 1939,
at ten o'clock A. M.

Philadelphia, Pa., March 16, 1939

Fourth Day

Plaintiff's Evidence (Continued)

(MR. HIRSCH:

It is stipulated and agreed that the particular persons who did the work or contributed the labor or supplied the materials for the items of damage complained of, if called on the stand would testify that the charges for their material, labor or supplies were fair and reasonable market value.)

MR. HIRSCH: v

May we see you at side bar for a minute?

THE COURT:

Yes:

MILTON S. STEEPLE, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. Mr. Steeple, after we adjourned court yesterday and at my request did you take all of the various categories or items of damage for which you have separate files, for which you had separate files in court, and pick out those items over which you had direct contact and supervision during the course

of their repairs, and can testify to the nature of the repairs,—

A. I did.

Q. — from those over which someone else in your organization had the supervision of the repairs? You did separate them?

A. Separated those both.

Q. Now, will you tell us, have you retained in your lap the files over which you had this direct supervision of repairs?

A. I have.

Q. Just read us off the names of the items which you can actually cover as to those repairs.

A. Repairs and miscellaneous replacements to office equipment.

Q. Keep your voice up.

A. Repairs to desks, typewriters, adding machines. Repairs and replacements to sealing machine. Repairs to label pasting machine. Repairs to multigraph equipment. Repairs and replacements to stenciling machine. Inventory shortage. Damaged silk. Silk and yarn waste damaged on machines. Labor cost of sorting wareroom merchandise. Damaged hosiery. That is all.

Q. Now, as to all other items someone else will testify?

A. Yes.

Q. However, all of the items, both those which you supervised, those which you supervised as to repairs and replacements, and those which you did not, passed through you for payment?

A. That is true.

MR. HERSCHE:

All right, now, you may cross examine.

Recross Examination

BY MR. SIMONS:

Q. And as far as all the other items that you haven't read today you know nothing about them except that they were paid through you?

A. Yes.

Q. Do you have those which you marked for identification yesterday?

MR. HIRSCH:

They are all here. You better pick them out.

MR. SIMONS:

No, I just wanted to separate them, so the stenographer will be able to identify them, that is all.

MR. HIRSCH:

There they are.

MR. SIMONS:

All right, better leave these here for the moment. I don't want to take the time.

MR. HIRSCH:

All right.

BY MR. SIMONS:

Q. Now, referring particularly to the matter of repairs and miscellaneous replacements of office equipment, you have an item there of four shades. What was that for?

A. Can I see the bill, please?

Q. Oh, surely, I am sorry. That is the top bill that I am referring to.

A. What?

Q. The top bill that I am referring to.

A. Yes. That particular item I am not quite certain of. The other item I am, that makes up this group.

Q. What is the other item? I didn't see it.

A. The other item is the cleaning of the rug in Mr. Struve's office that was damaged by the—

Q. Now, wait,—

A. —ink—

Q. —cleaning; were you in Mr. Struve's office on the 6th of May?

A. What time?

Q. After—

A. After the—

Q. —the crowd broke it?

A. No, I was not.

Q. You don't know what the condition of the rug was on the 6th of May?

A. No, I know the condition of the rug on the 7th of May, though.

Q. Were you there on the 7th of May?

A. I was, all day.

Q. And were you in Mr. Struve's office that day?

A. I was.

Q. Was it then that you noticed—

A. Yes.

Q. —that it was marked up? You didn't see it on the 6th?

A. The ink was still on the rug. It couldn't be gotten out.

Q. And there was a charge of \$19.54?

A. Yes.

Q. Now, the four shades for \$5.40, you don't

A. I can't quite tell,—

Q. —recall.

A. —identify that small item.

Q. Now, you have here another item, Fidelity Felt Company; for \$16.00. Do you know what that is about?

A. Let me see it.

(The bill was shown to the witness.)

A. (Continued) Yes, they were the felts, the green felts that were under the glass top tables that were damaged.

BY MR. SIMONS:

Q. You mean the felts under the glass?

A. That is right, green felt.

Q. Now, there were ten yards, seventy-two inches wide of a green felt?

A. That was cut to fit the size of the table, the particular table.

MR. HIRSCH:

Keep your voice up, please.

A. (Continued) They were cut to fit the particular table that—

BY MR. SIMONS:

Q. You mean you had an entire green felt on the table, and glass on top?

A. Underneath, that is right.

Q. Under the whole glass?

A. To prevent the glare of the glass.

Q. What kind of a table was this?

A. I believe that was Mr. Struve's—the table in Mr. Struve's office.

Q. Well, now, do you know what table, then?

A. Not exactly.

Q. I don't want to guess at these things.

A. Not exactly, no, not exactly which table they were, whether it was one or two, and that was cut for two, I think. I didn't keep any exact records, but—

Q. When you talk about a table, you aren't referring to a desk?

A. Well, it is a table, a long table in Mr. Struve's office, and there were desks where the glass was—

Q. Was it a desk? Was it used as a desk?

A. Yes, as a desk.

Q. And the 72—

A. Not exactly a desk; it is in back of the desk. It is a long table such as would be in a board of directors' room, and so forth.

Q. Yes, and you say the seventy-two-inch wide felt was for the entire table?

A. Yes, that is my recollection.

Q. Well, isn't it a rule, or isn't it customary that whenever you have a glass top the felt is just around the edge—

A. No.

Q. —of the glass?

A. Oh, no. No, that felt is put on there. If the glass is clear it throws a glare when you are working on it. We have some of our desks still equipped that way.

Q. And you aren't certain whether that is in Mr. Struve's office or not?

A. Not exactly; no.

Q. Do you have any other such tables around?

A. Yes, we do.

Q. Where?

A. In the office, and there are glass top tables where there is felt underneath.

MR. HIRSCH:

Mr. Steeple, you are so confidential with Mr. Simons I am afraid these people can't hear you.

THE WITNESS:

I am sorry, I will try to—

BY MR. SIMONS:

Q. Now, did you see that particular table—well, you don't know which table it was, so you can't tell us the condition it was in on May 6th?

A. I can't remember exactly every table that was broken, or every table top that was broken.

Q. And you don't know what, if anything, happened to the green felt that was on there on May 6th?

A. No, I don't.

MR. SIMONS:

Mark this the next number for identification.

(Folder relating to repairs and miscellaneous replacements to office equipment was marked Exhibit D-8 for identification.)

BY MR. SIMONS:

Q. Referring now to the items of repairs to desks, typewriters, adding machines, et cetera, you have one item of office furniture and fixtures, Pittsburgh Plate Glass, \$47.77, and you have: see—I can't read it. Is that an item that was included in the glazing account?

A. No, that would be in a separate folder. That would be in a separate item.

Q. There is no other identification of that item in this folder, although it does—that item of \$47.77 does go to make up your total that you have?

A. That—I won't—I will change that. That may be in there, I won't say for certain, that may be in this here, this other item here, you see, mill fixtures, furniture and fixtures.

Q. In other words, it is your thought that that may be included—

A. That may be.

Q. —in some other item?

A. That may be.

Q. So this item of \$1,561.76 we will have to deduct from that \$47.77?

A. I wouldn't say. It would have to be checked up further.

Q. Oh.

A. I wouldn't say immediately.

Q. Well, where would it be, in the glazing item?

A. I should imagine Pittsburgh Plate Glass.

(Another folder was shown to the witness.)

BY MR. SIMONS:

Q. Do you know whether that \$47.77 is one item or a number of items?

A. I should imagine it would be one item, part of one bill.

Q. Is it possible that that may have been included in some of the total items of the Pittsburgh Plate Glass?

A. It wouldn't—if it was in here it would have been deducted out of there and put in here (indicating).

Q. Although—

A. In setting up—

Q. —your computation of all the bills—

A. In setting up the claim.

Q. The computation of all of the bills which

you have in that folder is correct, in other words, I mean, the totals that you have taken, the grand totals of that folder?

A. Yes.

Q. And that is the total you have given us for that particular file of glazing?

A. That is right.

Q. And there has been no deduction of \$47.77?

A. That I couldn't say without checking, going into it.

BY MR. HIRSCH:

Q. Well, have you claimed it twice? That is what Mr. Simons wants to know.

A. No.

BY MR. SIMONS:

Q. Although if it is a matter of the Pittsburgh Plate Glass this is the only place where you have those bills?

A. Correct.

Q. And it may have been included in all of these bills, but actually belong to some of the office fixtures or one of the desks, or something of that kind?

A. Yes, but it isn't included—it wouldn't be included a second time. It wouldn't be included in the glazing and in this here group here.

Q. Well, then, if it is to be included at all it would be in the glazing?

A. I should imagine.

Q. And in view that you have nothing here to identify it, we will have to deduct \$47.77 from this total?

A. If necessary, that is true.

Q. All right. Now, I show you an item here of the Keystone Index Card Company, one 8 by 5, 66, oak. Will you tell us what that is, an item for \$88.00, less a discount, a net item of \$61.60?

A. That is a new desk.

Q. And that new desk was for what part of the factory or office?

A. The new desk was for—at the telephone exchange, which was completely demolished.

Q. Well,—

A. And had to be replaced.

Q. Well, when you say completely demolished, you know nothing about office furniture?

A. No, but I had an estimate made of all the office—

Q. Well, now, wait a second, do you have the estimate here?

A. I do.

Q. Where is that item?

THE COURT:

What is the amount of this item?

MR. SIMONS:

Sixty-six dollars.

THE WITNESS:

\$61.60.

MR. SIMONS:

That is the net amount, yes.

BY MR. HIRSCH:

Q. Well, now, what is all of this?

A. That is the estimate that was made. You will find there is a letter there, I believe in the back,

where it covered this particular desk, where they say—

MR. HIRSCH:

Mr. Steeple, everyone here wants to hear you.

THE WITNESS:

Very well.

MR. HIRSCH:

They are trying the case, not Mr. Simons. Please keep your voice up.

THE WITNESS:

There is a letter there in the back there where it indicates this desk was demolished to the point where it could not be repaired.

BY MR. SIMONS:

Q. Now, is there any way I could identify this desk by looking through this letter?

A. By that letter, that is in there.

Q. All right, excuse me a minute.

MR. SIMONS:

If Your Honor please, just to get ourselves straight, now, for the purposes of the record, there was an offer made of all of the books and papers and records and everything else, offered in evidence. I assume that their acceptance into evidence doesn't give them any evidentiary value or the right to go to the jury, if there are some things in particular that are objectionable. Thus, I am handed this, which is just a self-serving declaration—

THE COURT:

Well, I—

MR. HIRSCH:

That is understood.

THE COURT:

Yes, I understand the purpose of that offer in evidence was to have them so you could use them for anything you wanted, and they will not be sent to the jury.

MR. HIRSCH:

Correct.

MR. SIMONS:

Right, they will not be considered as evidence unless—

THE COURT:

Well, they are considered as evidence, but both sides stipulate that they won't be sent to the jury except so far as either one of you may select certain ones and offer them. They are evidence for the purpose of giving you the opportunity to use them for any cross examination you want.

BY MR. SIMONS:

Q. Now, it is on the basis of an estimate that you received from someone, or from the Keystone Index Card Company, that you decided to buy a new desk?

A. No, I saw the desk on May—

Q. Yes.

A. May 7th.

Q. And you say you had an estimate presented

to you, or a suggestion presented to you, by the Keystone Index Card Company,—

A. That is correct.

Q. —as a result of which you bought this new desk. Now, can you describe that desk that you claim was damaged?

A. Other than it was an oak desk.

Q. It was a what?

A. An oak desk, to match the other desk in the office.

Q. And how large a desk was it?

A. Well, I—I don't know the exact dimensions.

Q. Well, what kind of a desk was it?

A. It was a wood, oak desk.

Q. Well, was it an ordinary straight top desk?

A. Yes.

Q. Was it a roll top desk?

A. It wasn't a roll top desk.

Q. Was it a typewriter desk?

A. No, it was a straight desk.

Q. Straight desk?

A. Straight, flat top desk.

Q. Straight, flat top desk?

A. That is right.

Q. Did you see any mention made of a straight flat top desk in here?

MR. SIMONS:

Showing him the papers presented—

A. I might state all of the desks in the office—

MR. SIMONS:

Wait a second, just to get the record straight

—showing the papers presented by the witness to me.

A. (Continued) This desk was in the outer office. All desks in that outer office are flat top desks, so any replacement, naturally, would be a flat top desk.

Q. Well, do you mean to say that all the desks in the outer office are the same?

A. Not exactly, no.

Q. Therefore, there were some distinguishing features—

A. This wasn't—

Q. —about this—

A. That is right.

Q. —particular desk?

A. No, just an ordinary desk.

Q. Will you show me where there is anything in there about it?

(The letter was shown to the witness.)

A. The fourth paragraph, here. That has reference to this desk.

BY MR. SIMONS:

Q. And in here they recommend the purchase of a new desk?

A. Yes.

Q. Since the operator requests—reading from this—since the operator requests that a panel be placed at the back of the desk between the two pedestals. This desk was completely pulled apart and the top badly damaged. That is all they say about it in this letter.

MR. HIRSCH:

No, that is not complete. Read the whole paragraph and then you will be accurate.

BY MR. SIMONS:

Q. The side opening typewriter desk at your telephone exchange is badly damaged and we find it advisable to recommend the purchase of a new desk instead of repairing the old one—

MR. HIRSCH:

"So badly damaged", not "badly damaged"; is "so badly damaged".

BY MR. SIMONS:

Q. —is so badly, pardon me; instead of repairing the old one, especially since your operator requests that a panel be placed at the back of the desk between the two pedestals.

In other words, the operator requested some changes to be made in that desk.

A. No, the new desk wasn't purchased on the basis of that. It was purchased on the basis of, it would cost more to repair the desk, it was on the repair—

Q. Well, you have no estimate here for the repairs of it. This is just a letter of recommendation by a company that is selling furniture.

A. That is included in the estimate.

Q. Where do you have the estimate for that?

A. It is on the top there. I might explain that in these desks there was no—

Q. Now, wait a second, let's find this one thing, so we don't have the record confused any more than necessary.

MR. HIRSCH:

Let him show it to you.

BY MR. SIMONS:

Q. Where is that?

THE COURT:

Well, gentlemen, may I speak to you?

A. My judgment is that this—is that that was included in this estimate—

THE COURT:

Will you come to side bar a minute?

(Discussion at side bar.)

THE COURT:

Members of the jury, counsel and the Court are going to try to work out some means of shortening the testimony, which appears to the Court now to be developing into a very long and elaborate trial. Now, it may be possible that we can get some method of arriving at an issue without going into the details, which apparently really cannot be helped. It is a case in which there is a claim for a very large number of separate items of damage, and it can hardly be avoided, the cross examination on each separate item, that is, unless some arrangement can be made by which we can get away from it; and I think that we can profitably spend about a half an hour in trying to discuss some means of shortening this testimony on the damages, so that we will recess for a half an hour. At ten minutes after eleven you come back.

(Recess at 10:40 o'clock A. M.)

(The jury was then excused until two o'clock.)

After Recess

Present: Counsel as before noted.

Plaintiff's Evidence (Continued)

THE COURT:

Mr. Syme, did you determine whether you would be ready to proceed this afternoon?

MR. SYME:

I am going to put a witness on this afternoon, yes, sir.

THE COURT:

Well, then, I will say to the jury, just so that they will understand the situation, that as this case developed it became apparent that there would be a great deal of very lengthy and complicated testimony on the question of damages. That appeared this morning, in that we spent about forty minutes going over a total item of damages amounting to about a hundred dollars. That is not anybody's fault at all, it is the way the case has to be tried, and it cannot be avoided.

After conferring with counsel I came to the conclusion that the only sensible way to proceed would be to suspend the testimony on the matter of damages, not take any more testimony at the present time, until that whole question has

been referred to a Master whom the Court will appoint and who can make a report that I hope will make it unnecessary to take a great deal of testimony before you which would otherwise have to be taken, so that the Court is going to appoint a Master, and I will say that I shall appoint Mr. Bachman, who has already acted as Master in some of the preliminary phases of this case, and refer the whole question of the amount of the various items of damage to him, and we won't hear any more testimony on that point until he has reported. The report will be before you for such use as can properly be made of it.

We will, however, go on with the testimony relating to the single question of the liability of these defendants for whatever may have occurred, the responsibility of the union and the liability of the other parties, and when we are through with that we will have to recess until the Special Master is ready to report on the question of damages, and then we will resume the hearings in the case, but it seemed to me that if we attempt to go through with the whole question of damages as we were starting out to this morning it would be a matter of weeks, and I hope we can all be relieved of some of that time and work spent in that way by the method that the Court has decided to adopt, but we will proceed and hear all the testimony on all the other questions involved in the case except the measure and amount of the various items of damages.

MR. HIRSCH:

May I at this time offer into evidence the depositions of the following parties, which depositions were taken pursuant to the rules of court on December 6th, December 7th and December 8th, 1938? May I read the names?

THE COURT:

Well, the depositions are in the Court's hands sealed at the present time. The application is that they be opened now and received in evidence, is that correct?

MR. HIRSCH:

That is correct.

THE COURT:

All right.

MR. HIRSCH:

—as to these parties. In other words, I am going to name the parties.

THE COURT:

All right.

MR. HIRSCH:

—whose depositions I ask be received in evidence.

THE COURT:

All right.

MR. HIRSCH:

And without burdening you and the jury listening to my naming them, I will hand a list to the stenographer.

THE COURT:

Very well.

MR. SYME:

That is agreed to, Your Honor.

MR. HIRSCH:

And I would like just to make the general statement that my purpose in doing this, my main purpose, as I have indicated to Your Honor, is to avoid the necessity of calling all of these persons and having them asked the same question and obtaining the same answer from them again, which will take considerable time, because I think there are some thirty-four or thirty-five names; and, furthermore, while I do not intend to read the depositions at this time I ask leave at the proper time, at the conclusion of the case, to read such parts of the depositions as I may think—

THE COURT:

Very well.

MR. HIRSCH:

Yes.

THE COURT:

They will be received and the reading of them will be determined as it becomes necessary.

MR. HIRSCH:

I also offer in evidence in conjunction with these depositions the following exhibits which were the exhibits offered in evidence at the time the depositions were taken, and these are the exhibits, all of which have been duly marked by the stenographer.

THE COURT:

Are these the whole thirty-five represented

her? There are none of them that are not offered?

MR. HIRSCH:

They are all within those. There are other depositions in there but some of those I have covered by oral testimony, and so forth.

THE COURT:

Well, there are some that you do not want to offer?

MR. HIRSCH:

That is correct.

THE COURT:

All right.

MR. HIRSCH:

I am giving the names of those whose depositions I want to offer in evidence.

THE COURT:

They can all be opened, but the ones you do not want can be removed. You advise the Clerk which ones you do not offer so that they can be removed and won't be filed with the others; later on, I mean.

MR. HIRSCH:

All right. I would like them all available, sir.

THE COURT:

Oh, they will be.

MR. HIRSCH:

It is just possible we may want to offer others at a later date,—

THE COURT:

All right.

MR. HIRSCH:

—but only if it becomes necessary by reason of testimony that will be produced by the defendant.

THE COURT:

All right, I understand.

MR. HIRSCH:

Will you make a note that these are with the depositions, as distinguished from the exhibits offered in evidence today? We will have one number for the depositions and these exhibits. That will all be in one bundle.

(The depositions of the following witnesses, together with the exhibits identified in connection with the depositions, were offered in evidence as Exhibit P-18:

Thomas Flynn
Harry Bach
Paul Walton
John Bernhardt
Herbert S. Fahy
Raymond Hallstein
Lonis Kenworthy
Peter Kremer
David E. Justice
Herman Freiheit
Edward Kozubel
Carl Kuebler
Paul Lang
Harry Edward Jones
Sesto Lucarini
William Anderson
Martin Pirozek

Howard Carpenter
Francis McDermott
Ernest Del Prete
Alfred Schuh
Louis Drigert
Jake Schulberger
Raymond Evans
Elmer Miller
John Ezzo
William Pawlick
George Flynn
Robert Pawlowski
George Hober
Valentine Razler
Milton Innitski
Walter Razler
Joseph Ryan
William Etter)

MR. HIRSCH:

William Leader I call as for cross examination.

WILLIAM LEADER, having been duly sworn, was examined and testified as follows:

Cross Examination

BY MR. HIRSCH:

Q. Mr. Leader, you are the president of the defendant union?

A. That is right.

Q. And for how many years have you been its president?

A. Since 1934.

Q. And you were president of the union throughout the entire year of 1937?

A. That is right.

Q. Do you recall having discussions with management during the period of the sit-down strike at the Apex plant, in which the question of settlement of the differences between management and the union was discussed?

A. You mean on May 6th?

Q. No, during the period of the sit-down strike.

THE COURT:

After May 6th?

MR. HIRSCH:

After May 6th and before—

THE COURT:

Before June 23rd.

BY MR. HERSCHE:

Q. Before June 23rd.

A. On May 7th.

Q. Well, do you recall a discussion approximately a week after May 6th, the one I have in mind, particularly, at the Mayor's office, at which you were present?

A. At the Mayor's office, I do.

Q. And Mr. Harry Sundheim was present?

A. That is right.

Q. And I was present?

A. Right.

Q. Mr. Sundheim and I were the ones who represented the company in that conference, and you were there representing the union, were you not?

A. That is right.

Q. At that time the question of the settlement of the differences was discussed, but no agreement was reached?

A. That is right.

Q. And in that discussion and in all other discussions you were there, you were acting as the president of the union and as its duly authorized representative to negotiate the settlement?

A. In all discussions I attended, that is correct.

Q. And you reported back all discussions to the executive board of your union, did you not?

A. I believe so.

Q. It is a fact, is it not, that after the conference in the Mayor's office indicated that no settlement could be reached because the union demanded a closed shop and nothing less than that, that you were asked by Mr. Sundheim whether or not the management would be permitted by the union and the sit-down strikers to remove finished merchandise which was on the premises of the Apex plant, for the purpose of shipping that against orders which were on hand,—

A. Well, that is—

Q. —and you refused?

A. That is a long question. Would you repeat it again?

MR. HIRSCH:

Repeat it, Mr. Stenographer.

(The question was repeated by the Reporter, as follows:

"Q. It is a fact, is it not, that after the conference in the Mayor's office indicated

that no settlement could be reached because the union demanded a closed shop and nothing less than that, that you were asked by Mr. Sundheim whether or not the management would be permitted by the union and the sit-down strikers to remove finished merchandise which was on the premises of the Apex plant, for the purpose of shipping that against orders which were on hand and you refused?"

MR. SYME:

May I object to that question, Your Honor? That question has a lot of implications in it. If Mr. Hirsch wants to ask those individually, for instance, negotiations, impossibility of reaching an understanding on the negotiations, and assumption that—

THE COURT:

Well, yes, it is a rather complex question.

MR. SYME:

Certainly.

THE COURT:

Why don't you ask him just the question whether Mr. Sundheim asked him a certain thing and what he replied to it? Put it the way you were, except that it is a question that involves three or four things.

BY MR. HIRSCH:

Q. Isn't it a fact that Mr. Sundheim asked you for permission—when I say "you", your union—for permission for the management to remove the finished merchandise which it had on hand on the

premises in order that it could be shipped against orders which it had on hand?

MR. SYME:

Just one minute, Your Honor. I object to the question. If Mr. Hirsch wants to ask Mr. Leader whether he asked him, that is one thing. If he wants to ask Mr. Leader whether he asked his union, that is quite another thing.

THE COURT:

Well, that involves, of course, a conclusion.

MR. SYME:

Exactly.

BY THE COURT:

Q. But did Mr. Sundheim ask you whether you—either you or the union—would permit the company to remove finished merchandise so that they could ship it against orders on hand? That is really what the question calls for.

A. Your Honor, Mr. Sundheim asked me, would I permit the merchandise in the Apex building to be removed. My answer to him was that at no time had I anything to do with removing merchandise from anywhere.

Q. Now, wait.

BY MR. HIRSCH:

Q. As a matter of fact, wasn't your answer that nothing could be removed unless you got a closed shop agreement?

A. I just stated my answer.

Q. Now, do you recall a conference that took place in our office, at which you and Mr. Herbert

Syme, your attorney here, Mr. Sundheim and I were present, which followed the conference in the Mayor's office?

A. I believe so.

Q. And if I may bring that conference back to your mind, we met in Mr. Sundheim's office and we discussed the question of settlement along the lines of the Reading agreement, and we finally were unable to agree on that. Do you recall that conference?

A. We negotiated, that is correct.

Q. And do you recall at that time my statement to you, that is, the management should be permitted to remove all of its finished merchandise against orders which it had on hand from customers all over the country, because of the seasonal nature, for one thing, the possibility of cancellation of the business, for another, and the fact that the labor which went into those orders had been paid for and it was only fair that we should be put in a position of being able to deliver and get our money for the goods? Do you recall that?

MR. SYME:

Your Honor, I object to this form of questioning that Mr. Hirsch is adopting. He is delivering speeches here, he isn't asking a question.

THE COURT:

No, I think that is all right. This is a different thing. Mr. Hirsch is summarizing a statement that he says or suggests that he made to Mr. Leader, and he is asking Mr. Leader whether he remembers that or whether he does not, or whether he agrees that it was made, or not. I

think that question is a different thing. It does not involve a lot of conclusions.

BY THE COURT:

Q. Do you remember any statement of Mr. Hirsch's to the effect that he has just asked?

MR. SYME:

Your Honor, the difficulty with a question like this is, if the witness says, "Yes" to one of these statements, and one of them happens to be—

THE COURT:

Oh, well, I won't hold—

MR. SYME:

—an admission—

THE COURT:

The witness won't be held to a "yes" or "no" answer. If that calls anything to your mind as to what Mr. Hirsch said you can state what it was.

A. Yes, well, Your Honor, on that I appreciate the opportunity to answer the way it is asked. I can recall Mr. Hirsch summing up the question to that extent and several other times in the same manner, and the answer was always the same, which was correct, that at no time did I have anything to do with moving of merchandise from anywhere, and I never thought it was a fair question.

BY MR. HIRSCH:

Q. Now, as a matter of fact, when I asked you

that question your answer to it was, "War is war, and until the union gets a—

MR. SYME:

Now, Your Honor, I object to that.

MR. HIRSCH:

I am asking the question.

MR. SYME:

I have tried to cooperate with Mr. Hirsh on this, and if Mr. Hirsh wants to testify to this—

MR. HIRSCH:

This is proper cross examination.

MR. SYME:

—he will have to testify.

THE COURT:

Well, it is just a way of putting the question.

MR. SYME:

Exactly.

THE COURT:

He is asking Mr. Leader—Mr. Leader is on cross examination, and he is asking him whether he said what he is now stating. Now, if Mr. Leader says "No", that is that. If he says, "Yes," why, that is also evidence. He may qualify it. I don't know what he is going to answer.

MR. HIRSCH:

What did I say, Mr. Rodebaugh?

(The question was repeated by the Reporter, as follows:

"Q. Now, as a matter of fact, when I asked you that question your answer to it was, 'War is war, and until the union gets a—'"

BY MR. HIRSCH:

Q. —a closed shop agreement not one pair of hosiery will be removed from that property against any orders you may have." Do you recall saying that?

A. At no time did I ever mention war with strikes, and at no time did I ever tell you that hosiery would not be permitted to go from the Apex factory if it was in there.

Q. That is your answer?

A. That is the answer.

Q. And isn't it a fact that when you did answer as you did I tried to convince you that you were not cooperating by telling you at that time that this strike would be settled some day and that if we were permitted to remove our finished merchandise against the orders which we had on hand and ship it, we would then have that much more money with which to operate after the strike was settled?

MR. SYME:

Your Honor, again I object to that.

BY MR. HIRSCH:

Q. Did I or did I not say that?

THE COURT:

Well, I don't see anything objectionable about that. Mr. Hirsch is asking the witness a question.

MR. SYME:

Mr. Hirsch can break up his question into a number of questions,—

THE COURT:

No, I don't think—

MR. SYME:

—instead of delivering these long, cumbersome questions, Your Honor.

THE COURT:

No, I think it is all right, Mr. Syme. I will overrule the objection to that question.

A. My answer to that question is that you made the statement then that you hoped the strike would be settled, and so did I.

BY MR. HIRSCH:

Q. Is that your complete answer?

A. That is a complete answer.

Q. And subsequent to that time you were again requested by Mr. Sundheim and by me for permission to remove finished merchandise on the property during the pendency of our negotiations for settlement and during the time this sit-down strike was in progress, weren't you?

A. And at all times the same answer was there.

MR. HIRSCH:

That is all.

THE COURT:

Have you any questions?

MR. SYME:

No questions—

THE COURT:

All right.

MR. SYME:

—at this time, Your Honor.

THE COURT:

That is all.

MR. HIRSCH:

Now, may I see Your Honor at side bar?

THE COURT:

Yes, sir.

(Discussion at side bar.)

MR. HIRSCH:

I would like the record to note that my taking the stand will be necessitated by the absence of Mr. Harry Sundheim, who has been sick for the last year or more and is still away and unable for physical reasons to attend this trial,—.

THE COURT:

All right.

MR. HIRSCH:

—he being the only other person present at those conferences in addition to myself.

THE COURT:

The only other person on your side.

MR. HIRSCH:

On our side, that is right.

SYLVAN HIRSCH, having been duly sworn, was examined and testified as follows:

Direct Examination

THE WITNESS:

Without question and answer, Judge, may I just make a statement,—

THE COURT:

Yes.

THE WITNESS:

—as testimony?

THE COURT:

Yes, surely, as testimony.

THE WITNESS:

During the pendency of the sit-down strike Mr. Sundheim and I were counsel for the company and we had conferences in the Mayor's office and in our office with Mr. Syme and Mr. Leader as the representatives of the union. I recall very distinctly that in the first conference at the Mayor's office, which took place some time after May 10th, 1937; a day or two, if I recall—I don't have the date in my mind; I have the meeting very vividly in my mind—after the negotiations which we were conducting looking to a settlement of our controversy fell through Mr. Sundheim then turned to Mr. Leader, in the presence of everyone, and said, as I recall his statement, to the best of my ability, "Irrespective of whether or not we settle this thing today, we have orders on hand from customers all over the country which we can fill

with merchandise which we have on hand at the plant. Will you permit us to go into the plant for the sole purpose of removing that finished merchandise so that we can ship it against orders?"

Mr. Leader's emphatic answer was, "No, not until this strike is settled."

Mr. Sundheim then asked, "Well, will you permit us to send in fixers to keep the machinery in repair during the period of the strike so that it won't deteriorate?", and Mr. Leader's answer was, "No".

Some few days later another meeting was held in our office. At that time Mr. Sundheim was present, Mr. Leader, Mr. Syme and myself. At that meeting we discussed the question whether we could get together on the basis of the Reading agreement, which was an open shop agreement, and we detailed the various elements of that agreement, and indicated in our conference wherein not only would we meet those various provisions, but better them—

THE COURT:

I don't think the details of the conference are relevant, Mr. Hirsch.

THE WITNESS:

All right, I think so.

THE COURT:

It is just a question—

THE WITNESS:

I am trying to fix the time—

THE COURT:

Very well.

THE WITNESS:

—for this subsequent conversation. No agreement was reached. At that time I turned to Mr. Leader and I said, "Irrespective of whether there is an agreement reached or not, we have orders on hand from our customers and we have finished merchandise on hand." I said, "We have paid for that finished merchandise. We paid the labor for it, and we certainly ought to be permitted by you to remove that finished merchandise in order that it can be shipped against these orders which we have on hand." I said, "In so doing we will then be put in funds because the orders, the finished merchandise on hand, is worth in excess of six hundred thousand dollars; This strike will be settled some day. We can't have a strike forever. Some day we are going to get together on some basis and settle this strike," I said, "Isn't it to your interest and the interest of your union that when this strike is settled we won't be financially crippled as a result of it but will be in a position to operate again so that all of the employees can go back to work and we can continue our operations? It will be to the advantage of everybody if we are permitted to remove this finished merchandise and ship it against orders we have on hand."

And Mr. Leader's reply was, "War is war, and we won't let you remove one dozen pair of hosiery against any order until you give us a closed shop agreement."

Some further time passed, and the last meeting that we had looking to negotiations for settlement, preceding the institution of legal proceedings, was in the Mayor's office, and once again the request was made for the removal of the merchandise for the same reason, and once again the request was refused by Mr. Leader. At that meeting we again requested leave to send in fixers for the machinery, and again that request was refused.

There are a number of other items as to which I could testify, but I am forced to take the stand by reason of Mr. Leader's answers to my questions and the absence of Mr. Sundblom.

That is all I have to say.

MR. SYME:

Your Honor, I want to state here for the record that nobody compels Mr. Hirsch to talk. Mr. Leader gave the version of the story as he remembered it, just as Mr. Hirsch apparently is giving the story with the version as he remembers it. Mr. Leader is as much entitled to his recollection of the story as Mr. Hirsch is—no compulsion, nobody compels him to take the stand.

THE COURT:

Well, Mr. Hirsch didn't mean he was ordered to take the stand, he meant that he felt it was necessary to present his side of the case properly to take the stand.

THE WITNESS:

In the interests of my client,—

THE COURT:

Surely.

THE WITNESS:

—with Mr. Sundheim away sick.

MR. SYME:

Well, even that is unnecessary, I mean, if it has to be stated for the record, because we told Mr. Hirsch that if he did not want to take the stand we would consider admitting Mr. Sundheim's testimony—

THE COURT:

Very well, gentlemen,—

MR. SYME:

—from the preceding case.

THE COURT:

—I understand the situation. Is that all? Have you any questions?

MR. SYME:

Yes.

THE COURT:

All right.

Cross Examination

BY MR. SYME:

Q. Mr. Hirsch, you have testified to the fact that the last conference preceding the institution of legal proceedings occurred in the Mayor's office, is that right?

A. As I recall it, yes.

Q. Isn't it a fact that there was a conference subsequent to that in Washington, and that on the way

back from Washington Mr. Leader was served with the bill in equity on the train?

A. I meant the last conference which I attended. I didn't attend any conference—

Q. Oh, I see.

A. —in Washington.

Q. As a matter of fact, there was another conference in Washington, and that immediately subsequent to that conference the legal proceedings were instituted, you know that?

A. Neither Mr. Sundheim or I were there.

Q. Well, Mr. Hirsch, in these negotiations most of the talking was done between Mr. Sundheim and Mr. Leader, isn't that right?

A. You mean did he talk more than I did in the negotiations?

Q. No, I mean, Mr. Sundheim conducted the negotiations, rather than you?

A. He was the—

Q. That is right.

A. —principal, rather than I.

Q. That is right. During this conference in the Mayor's office do you remember who was present?

A. The Mayor, you, Mr. Leader, Mr. Sundheim, myself. You are talking about the first conference in the Mayor's office?

Q. No, the conference at which Mr. Sundheim is supposed to have asked Mr. Leader so vividly for permission to remove the merchandise.

A. That was the first conference in the Mayor's office.

Q. And who was present, again?

A. The persons I have named.

Q. What time did the conference convene?

A. If I recall, it was convened late in the after-

noon. We had previously seen the Mayor, earlier in the afternoon. He phoned you, if my recollection serves me correctly, and asked you to have Mr. Leader down there, and then he phoned us late in the afternoon and we all went over.

Q. You are sure that I was at that conference?

A. As I recollect, yes. I am sure that it was through you that the conference was arranged.

Q. Well, now, that is not what I asked you.

A. All right.

Q. You told me—

A. I so recollect.

Q. —you were very definite I was present at the conference,

A. That is right, as I recollect you were there.

Q. Let me refresh your memory. I read from the notes of testimony of the statement of Mr. Sundheim in the injunction case:

"I think that was on Wednesday, May 1st I saw the Mayor at his office on the following day about 2:30. There were present the Mayor, the City Solicitor, Mr. Sharfsin, Mr. Hirsch, and myself; I went over"—this is Mr. Sundheim testifying—"I went over the entire situation with the Mayor. I told him what had happened to the Apex on May 1st";—apparently what he meant was May 3rd?

A. Those dates are wrong.

Q. " * * * He knew, himself, what happened to the Apex."

Do you remember Mr. Sharfsin's presence there?

A. Not when Mr. Leader was there. He may have come in and gone out. Mr. Sharfsin was there in the first conference with the Mayor when neither

you nor Mr. Leader were there. I remember that. Whether he came in and went out of our conference when Mr. Leader was there I don't recall.

Q. Do you remember Mr. Frankel there?

A. Not at the first meeting, no. Mr. Frankel was at the last meeting at the Mayor's office when in addition to our problem there was the problem of Arterraft discussed.

Q. And was I there at the last conference?

A. You were.

Q. I was there when you discussed the thing with Mr. Leader?

A. You were there when Mr. Sundheim asked him for leave to remove the merchandise. You were also there when Mr. Sundheim—well, I won't go into that, I mean, that is in addition.

Q. Let me again refresh your memory. On page 154 of the notes of testimony:

"I don't think Mr. Syme was in that conference, I think it was Mr. Leader, the Mayor, Mr. Sharfsin, Mr. Hirsch, and myself."

This is Mr. Sundheim testifying.

A. As to which conference?

Q. "We went over"—at the Mayor's office—"We went over the entire situation again. I had told him I told the Mayor in Mr. Leader's presence what I had agreed to do at the conference in my office I was about to leave when he called in I think,"—when the Mayor, referring to the Mayor—"I was about to leave when he"—referring to the Mayor—"called in, I think, Mr. Syme, Mr. Witkin, Mr. Frankel, Mr. Kugelman, who was the owner of the Arterraft, I think Mr. Kutz who was the mediator, for the State Department of Labor and I think that is all Mr. Sharfsin and the Mayor."

A. Now, what is your question?

Q. Well, does that tally with your recollection?

A. Vividly, because the conversation that we had regarding our particular problem took place after a conversation or a conference began in the Mayor's office that same evening involving the Arterraft. In other words, we were there originally.

Q. Well, you say "we"; who?

A. Mr. Sundheim, the Mayor, Mr. Leader, I think Mr. Frankel—I am just thinking when they came in, Mr. Frankel happened to be representing the Arterraft, but in any event—

Q. I was not there!

A. You were there. Whether you were there when the conference began or whether you came in later I don't remember, but when we came to the Apex problem, when we discussed the question of arbitration, you were there, because I recall distinctly talking to you at a time that the Mayor took Mr. Leader aside and took him outside to talk to him privately.

Q. Let me refresh your memory, Mr. Hirsch, as to what actually happened. You convened with Mr. Sharfsin and the Mayor and with nobody else, at seven o'clock that evening. At about eight-thirty I was called and told to come over to the Mayor's office, by Mr. Frankel. I first came to Mr. Frankel's office, and then we waited in the Mayor's waiting room, Mr. Frankel, Mr. Witkin and myself,—

A. I don't know this.

Q. —and about nine-thirty, you were sitting at the time with Mr. Sharfsin and the Mayor, and about nine-thirty, at Mr. Witkin's request—Mr. Witkin is the chairman of the County Commission, for the record—we were finally admitted, and then

after we were in there for about an hour the question of arbitration originally was suggested by myself, if you recollect, and then the discussion started on that score. Do you remember that?

Q. A. I remember that, but I do remember that you were present during the time that the problem of the Apex was discussed.

Q. Oh, of course I was present there subsequently.

A. The same evening.

Q. Yes, at nine-thirty, but this doesn't tally with my recollection and apparently it doesn't tally with Mr. Sundheim's statements.

A. Well, I think it does, but I don't know what your recollection is on the subject.

Q. I am afraid that your recollection on that score is just about as accurate as your recollection of "War is war".

A. Thank you.

MR. SYME:

That is all.

MR. HIRSCH:

Plaintiff rests.

MR. SYME:

May we see you at side bar?

THE COURT:

That is, rests except for the issue of damages.

MR. HIRSCH:

Oh, yes. I mean, I rest on the question of testimony relating to liability.

THE COURT:

Yes, all right. All right, gentlemen, do you want to see me?

MR. SYME:

May we see you at side bar just a second?

THE COURT:

Certainly.

(The following occurred at side bar:

THE COURT:

Mr. Syme now moves to dismiss on the ground, one, that the Court is without jurisdiction because no violation of the Sherman Act has been proved. Any other ground?

MR. SYME:

And, two, that the requirements of Section 6 of the Norris-LaGuardia Act has not been complied with and liability has not been established with reference to the defendants named in the complaint.

THE COURT:

The motion is denied. In a case of this importance, particularly in view of the decision of the Circuit Court of Appeals, I think that the questions should be considered upon a point reserved rather than upon a motion to dismiss at this stage of the proceedings.)

Defendants' Evidence

WILLIAM LEADER, recalled.

Direct Examination

BY MR. SYME:

Q. Mr. Leader, you are the president of Branch 1 of the American Federation of Hosiery Workers, is that right?

A. That is right.

Q. And you have been president for how many years?

A. Since 1934.

Q. Since when?

A. 1934.

Q. 1934. Just for the record, Branch 1 is a defendant in this case, and you are president of Branch 1 at present, is that right?

A. That is right.

Q. And prior to the time that you—or, rather, how were you made president of Branch 1?

A. I was elected president by the membership.

Q. You were elected president by the membership, and how often do elections for officers occur in Branch 1?

A. Once a year.

Q. Once a year. Does the entire membership vote?

A. That is correct. They have the privilege to vote.

Q. Are there any qualifications or any limitations on voting?

A. Not as long as you are a member.

Q. Not as long as you are a member. Prior to the time that you were elected president of Branch 1 did you hold any office in the union?

A. Vice-president.

Q. And when were you first elected—that, also, is an elective office, is that right?

A. That is right.

Q. And when were you first elected as vice-president?

A. 1930.

Q. 1930, and elections for the office of vice-president also occur every year?

A. That is right.

Q. And prior to time that you were vice-president of Branch 1 did you hold any other office in the union?

A. Chairman of Shop Associations and member of the executive board for many years.

Q. But during the period that you were not vice-president you worked as a hosiery worker, is that right?

A. That is right.

Q. How many years have you been working as a hosiery worker?

A. From about 1913.

Q. 1913, until you were elected vice-president, is that right?

A. That is right.

Q. How many members does Branch 1 have?

A. Approximately fifteen thousand members.

Q. And all of your membership is engaged in the hosiery industry?

A. That is right.

Q. All of your members work in Philadelphia?

A. That is right, with the exception—

Q. You have no—

A. With the exception of one small shop that is in Cheltenham, but right in the city limit.

Q. Right within the city limits?

A. That is right.

Q. Does your union have jurisdiction over hosiery workers outside of Philadelphia, outside of the Cheltenham shop?

A. Absolutely no.

Q. Now, Mr. Leader, what officers does Branch 1 have?

A. We have a president, a vice-president, and a secretary-treasurer, which are full-paid off offices. We have five elected trustees, and we have an executive board, a local executive board of approximately thirty-nine elected members, including the officers.

Q. So that for the fifteen thousand members that you have, you have three paid officers, is that right?

A. That is right.

Q. And you have trustees and an executive board. Will you tell me, Mr. Leader, in 1937—that is, at the time of the occurrence of the Apex Hosiery strike—how was your executive board composed?

A. The executive board at that time was composed of members who were elected from every shop.

Q. So that every shop in the city had representation on your executive board?

A. That is correct.

Q. How many members did each shop have?

A. I believe a limit of three members from each shop.

Q. Three members from each shop. How many members did the entire executive board have?

A. I would say approximately one hundred and twenty-five to one hundred and thirty-five members.

Q. And how many members were there on the board of trustees?

A. Five.

Q. Five. That is the number you have today?

A. That is correct.

Q. And that is the number you had in 1937?

A. That is correct.

Q. Now, Mr. Leader, in addition to those officers of the union do you have shop committees?

A. We do.

Q. You do. How many shops are there today under contract with Branch 1?

A. At present—

Q. Approximately.

A. At the present time, approximately forty full fashioned mills and about fifteen finishing plants.

Q. Forty full fashioned mills and fifteen finishing plants?

A. That is right.

Q. Suppose you explain the difference between a full fashioned plant and a finishing plant.

A. A full fashioned plant as we term it is one where they knit the stocking, and sometimes also finish it. A finishing plant is a plant that takes work from mills which knit it in the greige, dye it, and finish it, and then either return it to the mill or send it out to the customer.

Q. Are there such things as commercial finishers?

A. There are.

Q. What do you mean by a commercial finisher?

A. A commercial finisher is a finisher who doesn't knit any work of his own, but gets work from plants that do knit it, and either finish and sell it on their own account or finish it and sell it for the account of a customer.

Q. So that today you have approximately fifty-five plants under contract—

A. That is right.

Q. —with Branch 1?

A. That is right.

Q. About how many did you have in 1937?

A. At the start of 1937?

Q. Well, no; around May.

A. I would judge approximately about twenty-two full fashioned mills and a certain number of finishing plants.

Q. Twenty-two full fashioned mills. How many did you have on January 1st, at the beginning of the year 1937?

A. I would judge about eighteen.

Q. About eighteen, full fashioned mills?

A. Full fashioned mills.

Q. So that between the beginning of the year and the latter part or the middle of the year the only increase you had was about four plants?

A. That is correct.

Q. Now, you began telling us, Mr. Leader, that in the different shops you have shop committees, is that right?

A. That is right.

Q. Explain to us a little bit about this shop committee set-up.

A. A shop committee—

Q. Well, do you mean a shop committee or a shop association?

A. Well, you wanted me to explain the set-up?

Q. That is right.

A. A shop which we have under an agreement has a shop association of their own of members who work in that particular shop. They call a meeting and they elect their own officers who act as the shop committee. That shop committee has the power to take up grievances.

Q. Do they have the power to bind the union in any way?

A. They have absolutely no power at any time to bind the union to anything. They are subject to reversal by the union on their position on a grievance, also.

Q. Are they considered officers of the union?

A. They are not.

Q. Are they considered in the same capacity as members of the executive board are?

A. They are not.

Q. About how many employees would you say, Mr. Leader, the average hosiery shop has? Or, you don't know, I withdraw that.

A. I could give you particular shops.

Q. Yes.

A. But not the average.

Q. Withdraw that. Mr. Leader, the greater part of the hosiery plants are located in one section of Philadelphia, isn't that right?

A. That is correct.

Q. What section of Philadelphia is that?

A. The northeastern section.

Q. Do you live in the northeastern section of Philadelphia?

A. I do.

Q. How many years have you lived there?

A. I would judge about thirty-five.

Q. About thirty-five years. Are you familiar with the Northeast?

A. I am.

Q. It is a highly industrial section, isn't that right?

A. Absolutely.

Q. Now, name some of the major industries in the northeastern part of Philadelphia.

A. Aside from hosiery there are radio plants which employ approximately about fifteen thousand people, mainly at the Phileo Radio plant, Heintz Manufacturing Plant, which employs a few hundred people, we have different textile mills, upholstery mills along Allegheny Avenue, and textile mills by any number of them, and there are plants such as the Disston saw mills, and plants such as the Stetson hat factory, and innumerable other ones, if you want me to go on to—

Q. That is enough, Mr. Leader.

A. —mention them.

Q. All of those or a greater part of them that you have mentioned are unionized, isn't that right?

A. That is correct.

Q. You operate under contract today with all of the hosiery plants in Philadelphia?

A. Every one of any size, with the exception of a few small plants, with one or two machines, which are more or less classed as bootleg plants by the trade.

Q. Now, Mr. Leader, suppose you give us some of the major provisions in the union contract, in the average hosiery contract.

MR. HIRSCH:

Well, I think—I have hesitated to object because I want to give them wide latitude, but I don't think that has anything to do with the question at bar.

MR. SYME:

Oh, we are going to discuss this—

MR. HIRSCH:

It is entirely irrelevant, and I object to it at this time.

MR. SYME:

The difficulty with Mr. Hirsch is that when he had witnesses on the stand he insisted upon telling about closed shop, closed shop, closed shop, until the ears of the jury have been cluttered with it. Now, it is only fair, having my witness on the stand, that at least one witness explain what this "bogeyman" of the closed shop is.

THE COURT:

I don't think the matter is relevant. I will sustain an objection if it is made.

MR. SYME:

Well, Your Honor, there is also the issue of check-off, union membership, the question of responsibility and ratification. How could a member renounce anything or resign from the union when if he resigned from the union he

would lose his job? The question of the Norris-LaGuardia Act comes in.

THE COURT:

I don't know just how.

MR. SYME:

Well, if Your Honor will bear with me for a minute—

THE COURT:

Surely, I will be glad—

MR. SYME:

—I will explain it.

THE COURT:

—to hear from you. I don't understand how the—

MR. SYME:

Well, Your Honor—

THE COURT:

It may have been—

MR. SYME:

—I am sure that as we develop this case, Mr. Hirsch is going to say that the reason that the union membership ratified this was by virtue of the fact that knowing it and knowing that the union was paying dues it didn't take the opportunity of either resigning from the union or renouncing its membership. Now, it becomes exceedingly pertinent to demonstrate that a renunciation or resignation from union membership involved loss of jobs, and the closed shop and the check-off provisions become exceedingly pertinent.

MR. HIRSCH:

Not on the legal question of ratification.

MR. SYME:

Oh, yes.

MR. HIRSCH:

The fact they didn't renounce or resign because they might lose their job doesn't relieve them of the fact that they ratified by not resigning. I object to that strenuously, sir. They may have had an economic reason, but that didn't prevent legal ratification.

THE COURT:

Well, the question is broader than your suggested reason for it.

MR. SYME:

Well, it could hardly be broader. The crux of this case, or, at least, one of the major issues in this case is going to be the question of union responsibility,—

THE COURT:

Yes, surely.

MR. SYME:

— and union responsibility—if Your Honor objects to the way I framed the question, that is perfectly all right, I am quite ready to reframe it and further narrow it down.

THE COURT:

Well, suppose you do. I want to have the fullest possible light on the question of union responsibility, of course. That is a major issue in the case, as you say, but I don't think it is necessary to go into the general discussion of

closed shop; and advantages and disadvantages—

MR. SYME:

No, but it is important—

THE COURT:

All right, suppose you get it down to the point that you have in mind, and then I think it will probably be all right.

MR. SYME:

I hope Mr. Hirsch won't object to this—

MR. HIRSCH:

If you are doubtful about it I will have to listen very carefully.

MR. SYME:

Perfectly all right. I will tell Mr. Leader not to answer until he listens to your objection.

THE COURT:

Well, what we really want to know is what leeway and what rights a man has and what happens to a man who doesn't like the things that are being done by the union under its constituted authorities. You can put the question in any way that you want to like that, that bears on the question of ratification.

MR. SYME:

All right.

BY MR. SYME:

Q. Well, all of the shops that are in the City today that are under union contract are on a closed shop basis, is that right?

THE COURT:

That is all right.

BY MR. SYME:

Q. Is that so, Mr. Leader?

A. That is correct.

Q. Now, will you explain a little bit what you mean by the closed shop?

A. The closed shop is an agreement signed with the consent of the manufacturer which makes it compulsory for the member who works in that shop when the agreement is signed to remain a union member if he wants to keep employment in that shop.

Q. And suppose an employee resigns from the union, what happens to him?

A. From the Branch?

Q. That is right.

A. Has the right to appeal if he is resigning for any reason to the National office. In the event he resigns from the Branch we would probably accept his resignation.

Q. And then what would happen to his job?

A. That would be a case for the impartial chairman to decide.

Q. Could the employer keep him working during the time that he had resigned from the union?

A. Absolutely.

Q. Doesn't your contract provide that none but members in good standing of the union can be employed by the employer?

A. That is right.

Q. Aren't you confusing two things, Mr. Leader? The appeal to the executive board, to the national executive board, lies from expulsion by the union, isn't that right?

A. That is correct.

Q. But where a man voluntarily withdraws from the union doesn't that subject him to discharge immediately?

A. That is correct.

Q. All the union has to do is notify the employer, isn't that right?

A. That is correct.

Q. —he is not a member in good standing of the union?

A. That is correct.

Q. What do you mean by "good standing"?

A. Good standing means that he has taken an obligation with the union, become a member, and as long as he remains a member, why, he is in good standing.

Q. Is the Apex Hosiery Company a closed shop today?

A. It is.

Q. Are all of the employees of Apex Hosiery Company members of the union?

A. They are.

Q. Does your union maintain a separate strike fund?

A. It does not.

Q. Mr. Leader,

BY THE COURT:

Q. You testified that around May, 1937, there were about twenty-two full fashioned mills that had union agreements, is that right?

A. That is correct.

Q. Now, did you mean that they were all closed shop agreements?

A. All the ones that we had.

Q. All the twenty-two?

A. Yes.

THE COURT:

All right.

BY MR. SYME:

Q. Mr. Leader, prior to May the 6th, 1937 did you at any time conduct any negotiations or any conferences with the Apex Hosiery Company?

A. What do you mean by "conduct any negotiations"? We had no conferences—

Q. You had no conferences?

A. Yes, now, what do you mean by the question, negotiations?

Q. Did you have any labor difficulties with the Apex Hosiery Company prior to May 6th?

A. Let me answer the question in this way, that we sent them a copy of an agreement which was similar to other agreements that were signed in the City of Philadelphia. We asked them to consider it and we hoped to follow that up with conferences, which were never held.

Q. Why were those conferences never held?

A. For the reason that I could make no contact with Mr. Meyer, after several years of trying.

Q. What do you mean, you could make no contact with Mr. Meyer after seven years of trying?

A. After seven years of having members off and on from the Apex union who at different times expressed a desire to get collective bargaining in the shop, and continued telephone calls which were never answered, why, that was the extent of the trying. We were limited by an injunction to stay

away from the plant, and the telephone was our only means of in any way endeavoring to make contact.

Q. All right. Immediately prior to May 6th—when I say immediately prior, May 5th, 4th, 1st—did you try to reach Mr. Meyer—

A. On May—

Q. —or Mr. Struve?

A. Preceding when?

Q. May 6th, 1937, except for the letter, after you sent the letter enclosing contract and asking for the conference, did you try to reach Mr. Meyer or Mr. Struve?

A. By telephone, correct.

Q. You did? About how many times?

A. I would say about a half a dozen.

Q. And what was your answer?

A. The operator would always ask the name of who was calling, and when the answer was "Mr. Leader", the answer from the operator was, "Mr. Meyer is not in".

Q. Mr. Leader, did you take up the question of the Apex Hosiery Company with your executive board?

A. With the executive board, along with the other shops in the City at the time of signing our agreements, the Apex would always be mentioned, and a motion was passed by the executive board that we should endeavor to get an agreement in all the shops as possible, which was an annual proceeding, and at all times was the business agents authorized to declare strikes in the event that we went through with collective bargaining, and a similar motion was made in the case of the Apex.

Q. Now, when you say "declare a strike" what do you mean by that?

A. I mean by that that it is the custom of our union at all times to go through with negotiations to the limit, we endeavor to get an agreement, to take it up with the people involved, namely, the workers who work in the plant. After a report is made to them and after every resort as far as negotiations is concerned is tried, it is then left up to the workers in that particular shop to meet with us what action they want us to take.

Q. Why didn't you try other means of negotiations before you declared a strike at Apex?

A. I tried in every manner possible to contact the firm and at the same time live up to an injunction handed down by Judge Finletter, which prohibited anyone from going near the place. In April, 1937 the Wagner Act was declared valid by the Supreme Court, which then give us the right to appear personally in front of the shop. I then called the meeting of the workers in that shop, who—

Q. Now, wait. When did you call this meeting, Mr. Leader?

A. The meeting was called on the night of May 5th.

Q. On May 5th?

A. That is right.

Q. And at this meeting, you say you called the meeting May 5th, you called a meeting of the workers of the shop?

A. That is right.

Q. And what happened at this meeting?

A. This meeting was held at the northeast corner of Fifth and Butler Street, on the second floor of a restaurant and cafe there, and they were all Apex workers at this meeting with the exception of one or two other representatives from the union.

The workers at that time asked for further information in respects to their rights under this Wagner Act, which had just been declared valid by the Supreme Court. I explained to them Section 7 (a) of that Act, which give them the right to ask for a—

MR. HIRSCH:

Do you think that all this—I don't want to, I am trying to keep down on objections, but he is now going into conversations that he had—

MR. SYME:

Oh, I am getting to May 5th,—

MR. HIRSCH:

—with people we weren't present at,—

MR. SYME:

—May 6th.

MR. HIRSCH:

—what he said and what they said.

THE COURT:

I will receive the testimony.

MR. HIRSCH:

All right.

THE COURT:

Keep as near the issues as possible.

BY MR. SYME:

Q. Go ahead, Mr. Leader.

A. I explained to them Section 7 (a), which give them the right to collectively bargain with their employers, and also the other sections which give them the right to choose an outside representative or a member of the union to act as their representa-

tive. They decided that they had a grievance, and something which was very important in respect to collective bargaining, they stated that—

MR. HIRSCH:

That is objected to. I object to any conversations between Mr. Leader—

THE COURT:

I think that that is—

MR. HIRSCH:

—and his workers.

THE COURT:

I think that is a correct objection. Don't go into the discussion that took place there.

MR. SYME:

All right.

BY MR. SYME:

Q. Mr. Leader, as a result of this meeting what instructions did you receive from the workers of the Apex Hosiery Company?

A. The workers of the Apex Company took a vote and they voted that I should take a committee the following day, request a meeting from Mr. Meyers, to listen to their grievances and take up collective bargaining for an agreement; and in the event that he would refuse to meet this committee and in the event he would refuse to meet them on May 6th, the time that I would appear, that I was instructed to declare a strike on their behalf.

Q. Mr. Leader, you have heard testimony by witnesses that you had people loitering about the Apex Hosiery plant several days before the strike, before

May 6th. Did you at any time instruct people to loiter about the plant, intimidate or coerce anybody?

A. I never at any time instructed anyone before May 6th to loiter about any plant or to intimidate or coerce anyone about anything.

Q. Was anybody authorized to act either on your behalf or on behalf of the union prior to May 6th?

A. Absolutely not.

Q. Or, as far as that goes subsequent to May 6th?

A. That is correct.

Q. Now, Mr. Leader, on May 6th at what time did you get to the Apex Hosiery plant?

A. Approximately about 1:45.

Q. And at 1:45 when you got to the plant what did you do?

A. I parked my car on Luzerne Street.

Q. Prior to 1:45 did you get any reports from any of the Apex Hosiery Workers as to what was happened at the Apex Hosiery plant?

A. Absolutely not. I was home going over agreements.

Q. Did you know, did you know that the Apex Hosiery plant was closed?

A. I did not.

Q. When you got to the Apex Hosiery plant at 1:45 what did you do?

A. I parked my car on Luzerne Street at the north side of the mill. I went over and I met Mr. Etter, who was elected by this group as the chairman of the Apex workers the night before, asked him, did he have his committee there, and he said he did, so that took approximately about twenty-five minutes to a half an hour to walk up to the

corner, get the chairman of the committee and the rest of the committee. I would say about 2:20 I took the committee, as instructed by them the night before, went up the steps of the Apex Hosiery mill and knocked on the door. I knocked on the door, and as I did a man asked what was wanted. I told him that I had a committee of Apex workers here who had chosen me as their representative and I desired to see Mr. Meyer on the question of collective bargaining.

He went inside and a few minutes later come out and said, "Mr. Meyer will not see you."

Q. That man went inside. You were standing on the outside—

A. That is right.

Q. —all this time?

A. That is right.

Q. Yes.

A. And had to talk quite loud, as the door, as I can recall, either was on the crack or not open at all. He could understand me and I could understand him.

Q. That accounts for that loud voice,—

A. That is correct.

Q. —is that it? Go ahead:

A. As he come back again, I again requested him to go in again and make the same request from Mr. Meyer. Again I received the same answer.

Inspector LaRue was standing there at the time along with some other officers who were on the step listening to the conversation.

Q. When you refer to Inspector LaRue you mean the Inspector of the Philadelphia Police Department?

A. The Inspector of the Philadelphia Police De-

partment is correct. He asked me at that time if it would be any use of him going in and delivering the same message. I stated that I would be glad if he did, as I wasn't any too sure the man at the door had got the correct message. I asked him to go in and inform Mr. Meyer that I had a committee here who had instructed me to get a meeting with Mr. Meyer today on the question of collective bargaining, that they had been attempting to organize for some time, they were fearful with the mill closed down, which I had learned at that time, that they were faced with a lockout of some sort, and that they wanted a meeting, and I told him to—to impress Mr. Meyer with this important message, that my instruction from his employees was that if he wouldn't meet that day that I had to declare the strike under their instructions, and it was very important.

He come out again and he told me the same thing as the other man, that Mr. Meyer wouldn't meet me.

I again sent him in, and again the same answer. This time he said that Mr. Meyer said something about, he would meet in the attorney's office some other time. I stated, "I am sorry, but my instructions are from the workers. Now, this is the fourth time that I have told Mr. Meyer exactly what was going to happen, through his agents, and why can't Mr. Meyer please come to the door so I can tell him personally?"

Q. All you asked for was a meeting?

A. That is right, and the Inspector said that at least twice, "Now, I went back, but it is no use, Bill," he said, "That was his final answer."

I said then to the committee, I said, "You have heard the answer from the man inside, you have heard the answer from the Inspector of the Police

Department. Your instructions last night was that unless this meeting was held that a strike was to be declared." I said, "Under the Wagner Act, again, let me tell you that the declaration of a strike does not interfere with your rights or does not stop Mr. Meyer from meeting you," in other words, by refusing to meet, and a strike being declared, did not take any responsibility off of him, so I said, "Acting under your rights under the Wagner Labor Act, and under your personal instructions last night, I declare a strike of the Apex workers who I am representing".

Q. Did you say did you say, "I declare a sit-down strike"?

A. At no time, I said, "There is the sidewalk. Under the Wagner Act and under your constitutional rights you are allowed to picket. I at no time can instruct you to picket, and neither can anyone else. If you see fit to picket, and picket in a peaceful manner, there is the sidewalk; I will keep endeavoring to meet Mr. Meyer on the question of a meeting."

Q. All right. Now, after you said that you declared a strike, after you had tried to meet Mr. Meyer on four occasions and had been unsuccessful, then what happened according to your recollection, or then what did you do?

A. I walked down the steps and over to the other side of the street.

Q. You walked down the steps and over to the other side of the street?

A. That is right.

Q. And then what happened?

A. And I went down to get my car. My car at that time had become wedged in with other cars

which were parked in the street; and I couldn't move it either backwards or forwards. I walked up to the corner to see if I could find anyone who knew who had any ears, because as far as I was concerned, my business had been finished and I wanted to get away and do other work. At that time there was quite a large crowd gathered. I can recall someone coming running up and stating, "They are killing our people down there."

I walked over to the corner, and the crowd was very thick. I walked back again, because I knew that it would take an awful long time to try to make headway in the crowd, and I was concerned with getting out of the section, because as I stated, my business was done.

I walked down to the car again and I waited there, and after some time, I would say between the time I got to the steps of the mill and went through all I have described it was approximately about 3:20, and I would judge between the time of 3:20 and 3:30 I heard quite a number of people running down, to where I was standing, hollering, "Where is Leader? Where is Leader? Mr. Meyer wants to see Leader."

At that time there had been plenty of commotion up at the other corner, which I didn't know what was going on, because I was standing by my car. I followed the group of people who came running down, and I would say about six or eight were hollering at the same time and insisting that I go up and see Mr. Meyer, that he wanted to see me. I knew that there had been excitement up in the street. I didn't know whether any of the Apex workers who I had represented may have got arrested for some reason

or other, and I instructed at least two different people going up there to call Mr. Syme up on the way to the office and tell him that I was going in to meet Mr. Meyer and to come up, because I didn't know if I needed an attorney for any reason or not, and I knew I would be in the mill—

Q. When you refer to Mr. Syme, you are referring to me as your attorney?

A. That is correct.

Q. All right.

A. I walked in, I walked in to the door of the Apex, through the door of the Apex Hosiery mill, and Mr. Meyer was standing right at the end of the vestibule. As he seen me he come forward and extended his hand and give me a very hearty greeting.

Q. And what did he say to you?

A. He said, "Bill, Bill," he said, "Can't you do something about this?"

I said, "About what?"

He said, "About all this."

I said, "Well, if talking about an agreement or anything like that is on your mind, I am willing to discuss it," I says, "and I am willing to do it now, only too glad! Is that what you want?"

He said, "Yes, yes."

I said, "All right, where can we discuss it?"

He said, "Come back into my office."

I immediately looked around and asked him, was the committee of workers, of his workers around. They weren't around. I asked, would somebody look for Etter and the committee. About five minutes later Etter and the committee come in.

Q. Yes.

A. And I took them back with Mr. Meyer into his

private office. We sat there, and he said, "What are you going to do about all this?"

I said, "Well, is it an agreement you want to talk about, or what is it you want me to do? After all, I am interested in organizing shops, and I am interested in the peaceable settlement of anything. I don't know what is going on here, but what is it you want me to do?"

He said, "Well, what is it you want to talk to me about an agreement on?"

I said, "You got a copy of the agreement, you know what it is, what is your opinion of it?"

He said, "I am not in very good physical shape to talk. I am mentally excited and everything else."

I said, "Well, I don't expect you to be rational in mind, you are in here and I am not going to demand anything, all I want to know, are you ready to meet and discuss an agreement with the union?", and he said, "Yes".

I said, "When will you discuss it, and what else is on your mind, if anything?"

He said—

Q. All this went on where, in the office?

A. In Mr. Meyer's office, along with this committee.

Q. Now, Mr. Meyer was sitting at his desk?

A. Sitting at his desk.

Q. And you and the committee were sitting around there?

A. Sitting on the furniture, his chairs and his settee, I think there.

Q. Right.

A. We then begin to discuss the time of when we would meet. He said that he would meet the following morning.

I said, "That is perfectly all right." I said, "Where do you want to meet?"

He said, "Well, we could meet in the attorney's office or we could meet somewhere else."

I said, "Well, it is all right with me if you meet in the mill, here."

He said, "All right, what time will we meet?"

I said, "Well, what time do you think you want to meet?"

He said, "I will meet at eleven o'clock."

I said, "That is perfectly O. K., so as far as I am concerned, is that what you wanted me to talk about?"

He said, "Yes, but I want you to do something about all this out in the mill."

I said, "What is out in the mill?"

He said, "Those workers are running wild out there."

I said, "Who?"

He said, "Our workers, they are running wild in the wareroom."

I said, "Now, what do you want me to do about that?"

He said, "Well, now, Mr. Leader, isn't it a question; when you have strikes and people stay in the mills, if they want cots you will supply them?"

I said, "Do you want cots for the people who are in your mill? I don't know who is in there."

He said, "Well, they are our workers in there."

I said, "All right, what do you want me to do?"

He said, "Will you supply them with cots? Will you bring food in to them, if they are going to stay, because I don't want them sleeping on the machines and the wareroom tables and everything else?"

I said, "If that is what you want, O. K. I will go

out. And what else do you want me to say to them, if anything?"

He says, "Tell them, please be orderly at all times in this mill".

I said, "Then you got three things, you want the people out here—who you say are your people, and I don't know, I am taking your word for it—you want them to be orderly, you want cots supplied to them, and you want food brought in to them?"

He said, "That is correct."

I said, "Well, what do you want me to do?"

He said, "Go out and talk to them."

I said, "I will do it if that is your request."

Just then, I believe at that minute, you arrived on the scene, as we were about to get up. I informed you that the committee—when I say "you", I mean Mr. Syme.

Q. Mr. Syme, all right.

A. I informed you that the committee and Mr. Meyer had just discussed the question and that they arrived at certain conclusions,—

Q. Which you had agreed—

A. —and would Mr. Meyer please go over with you, so there would be everything definite, because I appreciated walking into a mill with excitement going on, that an attorney's presence wouldn't hurt anyone, and he repeated—

Q. All right, and that you agreed to meet the next morning, isn't that right?

A. That is right, so he repeated the fact that we had agreed to meet definitely in the mill the next morning at eleven o'clock. We started—

Q. All right, what did you do after that?

A. We started out of the office and went about thirty feet out when we met Mr. Struve.

Q. Yes.

A. Mr. Meyer explained to Mr. Struve where I was going, at his request, out to the wareroom to talk to the workers to tell them to be orderly, and he said, "And I asked Leader to bring in cots and have them for the workers and he said he would see what he could do."

I went out to the wareroom and there was great disorder out there.

Q. Just one question, did Mr. Meyer at that time ask you to do anything about the crowd outside?

A. Not at that time.

Q. All right.

A. I went out to the wareroom, and there was great disorder out there. There was an awful lot of people. I said to him, "How do you expect me to get order in a crowd like this and give them a talk?"

He said, "Leader, for God's sake, will you do the best you can? Stand up and talk to them. Do anything, but please get them peaceful around here, and please tell them what I am telling you".

• I said, "All right, but I have got to get something to get order."

They said, "Well, stand on the table".

I said, "Well, that won't mean anything either, because I can't get order that way", so someone handed me a stick to rap for order, like you use in the union meeting as a gavel, in other words, something to attract their attention.

Well, I rapped for order with that stick, I think five or six times. I succeeded I imagine in getting maybe forty or fifty people who were definitely around the table to probably listen to what I was going to say, but I done the best I could. I stood up there and stated, "I am here at the request of Mr.

Meyer, and I am here at his request, that he thinks, he thinks you people in here, who are his workers, are going to stay in the plant, and if you do, and if you are going to stay in, he is requesting the union, will they supply them with cots and will they supply them with food, and he asked, above all, will you please be peaceful and orderly if you are going to stay in here? Now," I said, "That is his request, and it means, I imagine, that at all times anyone who stays in this mill shouldn't smoke, because there is fire hazards, and," I said, "aside from that, I think he wants you to do what is right while you are in here. We have got a meeting tomorrow morning and we are all hoping that it is going to be settled."

With that I left. Photographers were there taking pictures and asking permission, could they take them. I said, "Go ahead and take them, because it is a peaceful meeting and I think that it is certainly going to help the situation." Now,—

MR. SYME:

Your Honor, will you request order in the court room? There are a lot of Apex people here, all these people, and there is a condition very uncomfortable for the witness.

THE COURT:

Well,—

MR. HIRSCH:

Now, I think that remark of Mr. Syme was entirely unwarranted, unless he can point to some Apex person who was not a member of the union who created any disorder.

THE COURT:

It doesn't matter,—

MR. HIRSCH:

Of course.

THE COURT:

—but, now, the parties in the court room will preserve order and not make any demonstration, or have any laughing, or anything of that sort. Otherwise we will just simply have to clear the court room and go ahead. We are not going to have that.

BY MR. SYME:

Q. Go ahead, Mr. Leader.

A. We then come out of the wareroom and come back into Mr. Meyer's office. I definitely went over again what he said. I said I would see what I could do in the matter in respect to filling his requests if the people stayed in the mill. I at no time knew people were going to stay in the mill, and only took his word for it, that they were going to stay in.

He then said, "What are you going to do about these people outside?"

I said, "Who are they?"

He said, "I don't know."

I said, "Are they your people?"

He said, "I dont know who they are, but there is thousands of people out there".

And I said, "Well, I don't know who they are, either. Now, what do you want me to do with that?"

He said, "Will you go out and talk to those people," he said, "and tell them that we are going to have a meeting tomorrow morning where we are going to negotiate an agreement, and will they please go away from here?"

I said, "Do you expect me as a miracle man to

stand up and make my voice go ahead of all these people out there?"

He said, "Isn't there a sound truck somewhere around?"

I said, "I don't know."

He said, "Will somebody see if they can find a sound truck?"

I said, "Well, now, if there is a sound truck around when I get out there, and I will go out now and see what I can do, again at your request, I will be glad to talk through a sound truck and tell people just what we arrived at here, at your request".

I went outside, and by the time—that took maybe ten minutes more—and by the time I got out there, there was a sound truck across the street. Now, on that side, across, west of the mill on Fifth Street, the police had formed some kind of a cordon, because the word had got out that there was going to be an announcement made on the sound truck, and traffic temporarily had stopped. I went out there and talked through the sound truck and notified the people that—who I was, identified myself, and said that I had just had a meeting with Mr. Meyer, that we were going to have a meeting the following day where we were going to begin negotiations for an agreement at the Apex shop.

Q. Did that disperse the crowd?

A. As I was finishing the last words I got one of the sweetest duckings I ever got in my life, it started to rain and rain hard, and inside of five minutes the streets were cleared. Now, whether or not the rain chased the people away or my voice in making the announcement, I don't know, but it did rain, and rain hard.

THE COURT:

Well, now, I think it would be a good time to recess for ten minutes,

(Recess at 3:35 o'clock P. M.)

WILLIAM LEADER, resumed.

Direct Examination (Continued).

BY MR. SYME:

Q. Mr. Leader, after you had addressed the crowd and the rain fell and the crowd dispersed about what time would you say that was?

A. I would judge it would be in the neighborhood of 4:30.

Q. About 4:30. Do you know Miss Krupp?

A. Miss Krupp?

Q. Yes, a lady who testified to the fact that you were in the mill to approximately six o'clock and that she saw you there all the time.

THE COURT:

That wasn't her name,

MR. SYME:

Oh, I am sorry.

MR. HIRSCH:

Dorwart.

THE COURT:

Dorwart.

MR. SYME:

Dorwart?

THE COURT:

D-o-r-w-a-r-t.

THE WITNESS:

A lady who testified that I was in the mill after six o'clock?

MR. SYME:

That is right.

THE WITNESS:

Or six o'clock?

MR. SYME:

She was with you all the time.

THE WITNESS:

I don't know her.

BY MR. SYME:

Q. But it is a fact that you did address the crowd, isn't that right?

A. That is correct.

Q. And you weren't in the mill all this time?

A. That is correct.

Q. What did you do after you addressed the crowd?

A. I went home, changed my clothes.

Q. Now, on May 7th about what time did you get to the Apex Hosiery Company?

A. I would judge about ten-fifteen.

Q. And when you arrived at the mill at ten-fifteen what happened?

A. I had been requested to get up at the mill earlier than the appointment.

Q. By whom?

A. A Mr. Cooley, I believe the name was.

Q. Mr. Koelle?

A. Koelle.

Q. You have heard him testify on the stand?

A. That is right.

Q. What happened? Tell us.

A. I was in the Thirtieth District Police Station.

Q. What were you doing there?

A. There had been some arrests.

Q. That is the Front and Westmoreland Police Station.

A. I stopped there to see if they were our members and to see what the trouble was, if any. While there I received a telephone call, and the voice on the other end of the phone said it was Mr. Koelle. If I am not correct with the name,

Q. Yes:

A. —it is the gentleman who testified here. He stated that, would I please come up to the Apex shop immediately?

I asked him, was the appointment put forward to an earlier time than the eleven o'clock that was scheduled.

He said, no, there was a lot of disorder up there, and would I come up and see what I could do.

I said, "Well, I have got nothing to do with that situation, and I don't know whether I should come up or not".

He said, "Well, please come up and see what we can do about it".

I left the station house and went up there. I met him, and he told me there was quite a commo-

tion out in the wareroom, and would I do something. I asked him, did I have permission to walk out in the wareroom.

He said, yes, and I walked out, and seen nothing unusual, and walked back again. When I come—

Q. Now, you were to have a conference that morning, isn't that right?

A. That is right.

Q. With Mr. Meyer?

A. Eleven o'clock.

Q. And what happened with respect to that conference?

A. When I come back I asked during that time, was Mr. Meyer going to meet me at eleven o'clock as scheduled, and Mr. Koëlle said to call up the attorney, that there had been some change in the situation. I asked him would he call up, and he called up Mr. Mowitz's office, as I can recall it.

Q. Mr. Mowitz was counsel for the firm?

A. Was counsel for the firm.

Q. And is counsel for the Apex Hosiery Company?

A. He was counsel at that time, I don't know.

Q. He is today.

A. And I received information from the office there that Mr. Meyer was not going to meet.

I asked why. They said that his doctor had ordered him to bed for some reason, and I asked then when would the conference be held. I was informed that Mr. Mowitz's office would get in touch with me when the conference would be held. I immediately left the mill.

Q. Now, after you left the plant on May 7th

did you return? When did you next return to the plant?

A. On the day that the Mayor of Philadelphia spoke to the people who were in the mill, after the United States District Court had ordered the workers out of the mill.

Q. That was the next time that you were there?

A. At the Mayor's request.

Q. You have heard a janitor testify on the stand that he saw you in the mill three or four times. Do you know that gentleman?

A. I do not, never seen him.

Q. Mr. Leader, you have heard testimony here with respect to the destruction of property on June 10th and on June 23rd. Did you know about that?

A. Absolutely not.

Q. You participated in conferences, in negotiations after May 7th, conferences that were held either in the Mayor's office or in Washington, or in the office of Mr. Hirsh, isn't that right?

A. That is right.

Q. One of the demands that you made on behalf of the—what were some of the demands that you made on the Apex Hosiery Company?

A. There were two important demands. One was the elimination of what we call the "stretch-out" system, where one man run two jobs; and the other was a closed shop.

Q. Any other demands?

A. Yes, we asked the—that union conditions, for example, the forty-hour week, should prevail, and other conditions which were to the advantage of the workers and in the other agreements.

Q. Did you ask for impartial arbitration?

A. Absolutely. It is in all our agreements.

Q. Why did you ask for the closed shop?

A. Because under the system of the union and employers we found that the closed shop was both to the advantage of the employer and the worker.

Q. Did you at any time refuse to meet with the Apex Hosiery Company to discuss a compromise on the closed shop?

A. Absolutely not.

Q. The final conference occurred where, the conference at which the strike was settled, do you remember?

A. In the office of the Labor Board.

Q. The offices of the National Labor Relations Board,—

A. Bankers Trust Building.

Q. —in the Bankers Securities Building, and who presided over that conference?

A. Edward F. McGrady, Assistant Secretary of Labor at that time.

Q. And did the final agreement provide for a closed shop?

A. It did not.

Q. Tell us what it did provide for.

A. It provided for the elimination of the stretch-out system, and a clause which stated one man would run one machine. It called for union rates which were prevailing at that time in the other agreements. It called for a check-off system for our members. It called for such things as free needles,—

Q. Well, look, I didn't want to discuss all of that,—

A. Yes, all right.

Q. --what I wanted you to tell us was, what was the provision with respect to the closed shop? You say the closed shop wasn't there.

A. The provision for the closed shop was a clause that said that at such time when we could show a substantial majority of workers in that shop in our union, the firm would agree to a closed shop agreement. Mr. McGrady was to be the one who would decide what a substantial majority would be.

Q. Now, Mr. Leader, did you at those conferences offer to give the Apex Hosiery Company the authorization cards signed by a substantial number of the people?

A. Absolutely.

Q. And what was the answer of the Apex Hosiery Company?

A. Their answer was they wouldn't accept our cards as something which they would recognize.

Q. And they wanted you to do what?

A. They wanted us to change the card and word it the way they wanted it worded and then get the card signed over again.

Q. And you supplied the Apex Hosiery Company with cards, is that right?

A. That is right.

Q. And today the Apex Hosiery Company is operating under a contract with the union?

A. That is correct, three-year contract.

Cross Examination

BY MR. HIRSCH:

Q. And the cards which you supplied us were the new check-off cards which you received from

the workers who were members of the union and employees of the Apex plant?

A. Which card do you mean?

Q. The check-off authorization cards.

A. The first cards?

Q. No, the ones we actually accepted.

A. They were cards of which you had helped to word, to your satisfaction.

Q. But the ones that we accepted were the ones that you obtained from employees of the Apex plant who were members of your union,—

A. That is correct.

Q. —is that correct, and when a person joined your union they had to give you an authorization card for check-off purposes in order for you to collect the dues?

A. That is correct.

Q. And by the end of August, one month after the agreement of July 29th was signed, you supplied us with cards for one-third of our membership, is that correct, 848 cards?

A. You mean after we presented you with two thousand first?

Q. I mean after you presented us with four hundred which we refused, you then finally, one month after July 29th, gave us 848 cards of members who were employees in the Apex plant. Did you or did you not—

A. We—

Q. —give us 848 cards?

A. We presented you first with two thousand cards, which you refused to recognize and accept.

Q. Did you or did you not at the end of August, one month after the entire matter had been settled,

when peace was restored, finally present us with 848 cards for check-off purposes, which meant you had only 848 members in our plant out of twenty-five hundred?

A. I don't recall how many cards was presented to you the second time.

Q. Now, the first time you presented us with cards which we would not accept?

A. Correct.

Q. And the reason we told you we would not accept them was because you had gotten them under circumstances which amounted to intimidation, coercion, and because you had gone to the worker's homes and thrown mud and tar in their windows, and because you had beaten them up and forced them to sign against their will.

MR. SYME:

Your Honor, I object to that.

MR. HIRSCH:

He opened that.

MR. SYME:

That is obviously—

MR. HIRSCH:

No, sir, he opened that, he told us we wouldn't accept them, I am giving the reason.

MR. SYME:

I have no objection to Mr. Hirsch cross examining the witness on this, but tar and mud—now, Mr. Hirsch knows that that is merely a dramatic plea. It is unnecessary.

THE COURT:

Well, it is cross examination. The witness can say, "No, it is not true", but I would be glad if Mr. Hirsh would shorten his questions a little bit.

MR. HIRSCH:

All right.

THE COURT:

They usually contain a good deal of oratory as well as—

MR. HIRSCH:

Let me shorten it.

THE COURT:

—interrogation.

BY MR. HIRSCH:

Q. Did we refuse to accept those cards because of the circumstances under which they were obtained, and we told you those circumstances?

A. I can't recall any explanation except they weren't worded the way you wanted them worded.

Q. Isn't it a fact that the agreement provided that we would only recognize check-off cards which were signed after the agreement was signed?

A. That is correct.

Q. And isn't it a fact that we told you at the time when the agreement was being prepared that the reason we wanted a different wording on them was because we didn't want to have presented to us cards which were signed up before, and we wanted to know that we were getting new cards.

A. You stated that you didn't want cards that were signed up before, that is correct.

Q. And isn't it a fact that the reason we didn't want cards that were signed up before—and we so told you—was because they had been obtained under circumstances where the signer didn't willingly sign?

A. You said you didn't want them because they weren't worded the way that you wanted them worded.

Q. Well, tell the members of the jury how it is if you had two thousand members during the height of the strike, when no agreement was signed, how you had only eight hundred and forty members among our employees one month after the agreement was signed.

MR. SYME:

Mr. Leader is not addressing the jury. Mr. Hirsch knows that perfectly well.

THE COURT:

Well,—

MR. SYME:

He will answer Mr. Hirsch's questions and try to answer them as courteously and cooperatively as he can.

THE COURT:

That is all right, but the question itself, the fact involved, is relevant. The question can be answered.

THE WITNESS:

All right, Your Honor. The only answer I can give to that is, as far as the Union knew, those two thousand cards that were signed were cards that were signed making members legitimate—

legitimate applicants for membership of the union and members of the union.

BY MR. HIRSCH:

Q. But as an actual matter of fact when the agreement of settlement was signed and when peace was restored you were only able to find eight hundred and forty-eight people who would join your union and sign check-off cards during the month of August?

A. I—

Q. Isn't that a fact?

A. I wouldn't know if that is the correct number or not.

Q. All right. You said in the beginning of your examination under questioning by Mr. Syme that between January and, as Mr. Syme put it, about the middle of the year you only signed up four new shops. Is that or is that not a fact?

A. Approximately, that is the number. I am not qualified here today—I can supply records, but taking my memory, I say approximately four.

Q. Do you recall giving a deposition?

A. That is correct.

Q. And do you recall in the deposition that you stated that during the—wait until I find it. Withdraw the question for the moment.

How many mills did you have signed up in Philadelphia by the end of the year of 1937, hosiery mills?

A. Are you speaking of finishing plants, inclusive, or just knitting mills?

Q. Knitting mills.

A. I would estimate approximately about forty-two or forty-three.

Q. And including finishing plants?

A. Well, add ten, twelve more.

Q. That would be about—

A. Around fifty-five.

Q. About fifty-five. When did your organization of the Philadelphia market begin actively?

A. I would say from the inception of the organization we continually tried to organize Philadelphia actively.

Q. But you testified in your deposition, did you not, that beginning in 1930 you put on a campaign?

A. I said personally I became elected in 1930 as vice-president and I became very active in organization work.

Q. And isn't it a fact that between 1930 and 1937 you only were able to sign up less than, or approximately, twenty mills, including hosiery and finishing mills, during that entire seven-year period?

A. That is not so.

Q. All right, now, we will work it out as a matter of deduction, then. You had fifty-five mills by the end of 1937,—

A. That is correct.

Q. —isn't that a fact?

A. Approximately.

Q. Approximately?

A. I mean, don't hold me to these figures one way or the other, up or down a few.

Q. Well, now,—

A. That is understood, the way I am testifying.

Q. —what do you mean by a few?

A. Well, two—

Q. I realize you may be in error.

A. That is right; two or three.

Q. All right. Now, then, you had fifty-five or approximately fifty-five mills by the end of '37?

A. That is right.

Q. Isn't it a fact that you obtained contracts for thirty-seven of those mills during the year of 1937?

A. New mills? That were not previously under contract?

Q. Correct.

A. I would say, knitting mills, approximately twenty-four.

Q. And finishing?

A. Maybe seven or eight.

Q. And isn't it a fact that you obtained thirty-seven new contracts for closed shops from knitting and finishing mills during the year of 1937 alone?

A. I would say approximately thirty-three or thirty-four.

Q. And, therefore, when I said that by the end of 1937 you had approximately fifty-four or fifty-five I was correct, when I said that prior to 1937, during the seven-year period from 1930 to 1937, you were only successful in obtaining about twenty mills?

A. You are not correct.

Q. Why?

A. Because in the year of 1931 we had forty strikes in the City of Philadelphia, and during that time twenty shops signed up. The flight of industry has taken, I would imagine, about fifty or sixty hosiery mills out of Philadelphia in the period of 1930 to 1937, so we signed them up, and they stay in business, some of them, and some of them through the economic condition of the trade are out of business, so our job is a continual job of organization. We may have forty this year and twenty next year.

Q. But in the year 1937 you signed up more new

mills for closed shops than you had ever signed up before in any one year, isn't that a fact?

A. I would say about six more than we signed in 1930—or '31, rather.

Q. And the technique that you used and the method that you employed in order to bring that about was the use of a sit-down strike in every mill which didn't immediately capitulate to your demands?

A. The union or myself at no time has ever declared a sit-down strike.

Q. Have you ever supported it?

A. What do you mean by support?

Q. Financially.

A. If it is requested in the manner that Mr. Meyer requested to bring coats into a mill and food for the people who stay in there, yes.

Q. How many sit-down strikes were there in the City of Philadelphia during the year of 1937?

A. How many sit-down strikes? I don't—

MR. SYME:

Your Honor, I object to that. He is not qualified to testify to the—

MR. HIRSCH:

Oh,—

MR. SYME:

—number of sit-down strikes—

THE COURT:

Let's not—

MR. SYME:

In the hosiery industry, all right.

MR. HIRSCH:

The hosiery industry.

MR. SYME:

All right, if you will limit the thing that is perfectly all right.

THE COURT:

All right, I understood that.

MR. HIRSCH:

I didn't mean anything different.

THE COURT:

No.

BY MR. HIRSCH:

Q. How many sit-down strikes were there in hosiery mills in the City of Philadelphia in the year 1937?

A. Strikes that were classed as sit-down strikes, and at all times I want to qualify that, that at no time has the union or the—or myself ever declared one, that those classed as sit-down strikes, in the manner as I have explained, I would judge about twenty-twenty or twenty-one.

Q. And as a result of the fact that there were a number of sit-down strikes in the City of Philadelphia your union saw fit to set up what was known as a strike kitchen at 4638 Ditman Street, did it not?

A. Our union had a kitchen at Ditman Street, I don't know the address.

Q. It was carried in the books of your union as a strike kitchen, was it not?

A. I couldn't answer that question.

Q. You had an account number 615 known as kitchen labor and expenses, did you not?

A. That may be so, and the reason I say that is because I have nothing to do with the finances of the organization.

Q. I am only asking you if you know that the union maintained a strike kitchen at forty-six hundred and something Ditman Street.

A. My answer to that question is, I definitely do not know. I believe they did.

Q. As president of the union didn't you know that your union prepared food at an expense of thousands of dollars in the year 1937 at a strike kitchen on Ditman Street, which was supplied to all of the sit-down strikers in Philadelphia at their hosiery mills?

A. I knew that they supplied food to people in the [mills] where the permission was given for it.

Q. And were you requested in every one of the twenty-two instances where a sit-down strike was conducted, were you requested by the owner of that mill to please come in and supply the sit-downers with cots and blankets and food?

A. What mills are you speaking about?

Q. All the mills that you meant that you said that twenty-two mills in Philadelphia.

A. That had—

Q. Sit-down strikes.

A. —food coming in?

Q. Had food coming in, and had cots; were you requested by the owners to supply that food and those cots, or was Apex the only one that made that request?

A. The Apex made that request to me personally.

Q. And you were able to fill that request with two hundred cots, four hundred blankets and two hundred pillows the same afternoon, were you not?

A. I don't know the amount that went in.

Q. Suppose I show you a bill for two hundred cots and blankets which your union paid,—

A. Then I would—

Q. —would you then know the amount?

A. Then I certainly would.

Q. All right.

MR. HIRSCH:

Will you let me have the originals of your bills; please?

MR. SIMONŠ:

Which one is it? I don't know.

MR. HIRSCH:

I know; Weil's Curiosity Shop.

(The bill was produced.)

BY MR. HIRSCH:

Q. I show you a bill produced on call by your counsel, dated May 7th, 1937, from Weil's Curiosity Shop, for two hundred cots, two hundred pillows and 406 blankets.

THE COURT:

What is the date of the bill?

BY MR. HIRSCH:

Q. Does that refresh your memory?

THE COURT:

What is the date?

MR. HIRSCH:

May 7th.

BY MR. HIRSCH

Q. Does that refresh your memory?

(The witness examined the bill.)

A. It doesn't refresh my memory, but I would recognize that, from that bill, that the union paid it, yes.

MR. HIRSCH:

And will the union also produce all of its records pursuant to subpoena, or agree that account number 621 is known as cots and blankets,—

MR. SYME:

Your Honor,—

MR. HIRSCH:

Let me finish—and that into that account on May 7th there was transferred an expense account of \$2,474.50 which covered blankets and pillows purchased by the union from January 1st to May 1st, 1937?

MR. SYME:

Your Honor, if this is proper cross examination, frankly, I don't know it, but—

THE COURT:

This was not a question addressed to the witness. This was asking you to produce.

MR. SYME:

We will produce all of them.

THE COURT:

Will you agree—

MR. SYME:

We have already stipulated to that, but he is not the man to identify bills.

THE COURT:

This was not a question addressed to the witness.

MR. SYME:

Well, the preceding question asked him to identify something from Weil's Shop. He can't identify these things.

THE COURT:

Of course, that is for him to say. If he can't identify it he will say so.

MR. SYME:

He is not the proper person.

THE COURT:

Well,

MR. SYME:

He knows nothing about it.

THE COURT:

—it is entirely for the witness to say. It is not a legal objection. If it is a question the witness cannot answer he is quite able to say so. He knows better than anyone else whether he can answer the question.

MR. SIMONS:

I will have to check my records, I don't know.

If you say it is so,—

MR. HIRSCH:

It is so.

MR. SIMONS:

—if you checked the records, I will have to take your word for it.

MR. HIRSCH:

Well, then, you can recheck me.

BY MR. HIRSCH:

Q. It is agreed by your counsel that your union has an account known as account number 621, headed "Cots and Blankets", and that prior to May 7th there was another account known as "Strike Expense", from which account there was transferred into this account number 621 the sum of \$2,474.50, covering the purchase of blankets and pillows during the period January 1st to May 1st, 1937, from Weil's Curiosity Shop. Were those pillows and blankets totalling \$2,474. purchased at the request of mill owners in order that the union might make their employees comfortable during sit-down strikes?

A. I don't know.

Q. And did your union purchase all of these blankets and cots and pillows and maintain or set up a strike kitchen in anticipation that someone such as Mr. Meyers may some day ask you to supply cots and food and blankets to the sit-down strikers,—

A. You ask—

Q. —or were they set up because your union had adopted a method, a campaign in Philadelphia, of unionizing the non-union mills by the use of a sit-down strike technique?

A. I had nothing to do with the setting up of a kitchen. I know nothing about the setting up of a kitchen.

Q. Now, answer my question.

A. Will you repeat it again, please?

MR. HIRSCH:

Mr. Rodebaugh, will you read it, please?

(The question was repeated by the reporter as follows:

"Q. And did your union purchase all of these blankets and cots and pillows and maintain or set up a strike kitchen in anticipation that someone such as Mr. Meyers may some day task you to supply cots and food and blankets to the sit-down strikers or were they set up because your union had adopted a method, a campaign in Philadelphia, of unionizing the non-union mills by the use of a sit-down strike technique?"

A. I think again there is about three questions there. I don't want to evade answering—

MR. SYME:

Exactly, the witness has said it himself!

A. —the question—

MR. SYME:

I don't know whether any person, any intelligent person, sitting on that witness stand would know how to answer that question. That is a dissertation; that is not a question.

THE COURT:

Well, I think it goes very much to the point, although it is a rather long question.

MR. SYME:

Certainly.

BY MR. HIRSCH:

Q. Now, if you don't—

BY THE COURT:

Q. Let's cut it in half and ask the first question, whether this large amount of cots and blankets and money spent for it was maintained in anticipation that mill owners would request you to furnish sit-down strikers with those facilities. That is the first half of the question. That is fair enough.

A. I will answer "no" to the question.

THE COURT:

Now, you can ask the second half.

BY MR. HIRSCH:

Q. Now, as a matter of fact, these cots and blankets and pillows and the establishment of this strike kitchen for the preparation of food, was all carried out, purchased and done by the union in order to enable the union to carry out a program of sit-down strikes in the City of Philadelphia during 1937 in order to force open-shop manufacturers against their will to sign a closed shop agreement?

A. That is not correct.

Q. All right, I will leave that to the jury. Now, you supplied these cots and blankets and food to Apex at their request, correct?

A. That is right.

Q. Do you have copies of bills that you sent to Apex for the food that you supplied to them—

A. I couldn't—

Q. —at their request?

A. I couldn't answer that question.

Q. Did the union ever bill Apex for the food that it supplied to its employees?

A. As far as I know, no.

Q. What was the purpose of buying all these cots and blankets? Was the union in that business?

A. Of buying cots and blankets?

Q. Yes.

A. Absolutely not.

Q. The reason you bought that, the reason you bought cots and blankets and pillows, and the reason that you established a strike kitchen, was to enable you to assist and provide for sit-down strikers in the various hosiery mills in Philadelphia where sit-down strikes were being conducted, isn't that a fact?

A. To the best of my knowledge the kitchen was installed anywhere, wherever there was a kitchen, for the purpose of supplying food to people who had permission from a firm to bring it in.

Q. But you supplied food in every instance where there was a sit-down strike, did you not?

A. I do not know.

Q. Now, do you know why the union bought cots and blankets in the large quantity that were bought?

A. For someone to have something to sleep on where permission was given for the blankets or cots to be brought in.

Q. Name the other mill owners who asked you to bring in cots and blankets for their sit-downers, but for which requests you would never have brought them in.

A. I don't know of any mill owner with the ex-

ception of the Apex who asked me to bring any cots or blankets in.

Q. And what did you do with the twenty-seven hundred dollars' worth of cots, blankets or pillows that were purchased before May 7th?

A. I don't know who purchased them, and I don't know why they were purchased.

Q. Are there any meetings of the general membership or the executive committee conducted in your absence, as a rule?

A. No.

Q. You conduct all meetings, don't you?

A. That is correct.

Q. Now, the reason you conducted this campaign of sit-down strikes in Philadelphia is that you had a close political tie-up with Mayor Wilson, and you so said to your membership—

MR. SYME:

Your Honor,—

BY MR. HIRSCH:

Q. —in publications—

MR. SYME:

I object to that. Mr. Hirsch knows that that is not proper cross examination.

MR. HIRSCH:

It certainly is.

MR. SYME:

There was no examination in chief on that, and he is merely making that statement—I would much rather not state it before the jury. I would much rather state it at side bar.

MR. HIRSCH:

Well, I intend to press it, Judge Kirkpatrick, to show why such a technique was conducted in Philadelphia. There was a reason for it, and why they could get away with it, and I am going to show that their own statements show the reason.

THE COURT:

Well, I will permit the question. The issue that has been raised is the responsibility of the union for this sit-down strike, and the general method and objectives of the union are necessarily relevant, and I think it comes within the scope—

MR. SYME:

How does Mayor Wilson come in? I can't see the close political tie-up, as Mr. Hirsch puts it.

THE COURT:

I am sorry if you don't see it. The objection is overruled.

BY MR. HIRSCH:

Q. I show you a printed paper headed "Attention—Hosiery Workers", and then it says, "A personal message to hosiery workers from your President, William Leader", and ask whether or not that was sent out by your union.

(The witness examined the paper.)

BY MR. HIRSCH:

Q. Do you recall sending that out?

A. Will you let me read it, please, first?

Q. Go ahead. I didn't mean to rush you.

(The witness read the paper.)

THE COURT:

May I see it, please?

THE WITNESS:

Sure.

MR. HIRSCH:

It is the underlined part, Judge Kirkpatrick, that I am interested in.

THE COURT:

Well, now, Mr. Hirsch, you understand that I am not interested in the statement made with respect to political connections unless it deals with and throws light on the general policy of the union with regard to sit-down strikes, and I only permitted the question because you asked whether that did not go hand in hand with the sit-down strike campaign. I don't see anything here that assumes responsibility for the sit-down strike campaign.

MR. HIRSCH:

He starts out by saying how many were happening in 1937.

THE COURT:

I know.

MR. HIRSCH:

and then says that the organization of these mills was due to that. I think there is a direct connection.

(Discussion at side bar.)

THE COURT:

I really don't, I am sorry, but I really don't think that that bears out the—

MR. HIRSCH:

Well, now,—

THE COURT:

—suggestion that was made.

MR. HIRSCH:

Well, then, I will redraft my question, along the same lines, though.

BY MR. HIRSCH:

Q. First, did you send this to the workers?

A. Correct.

Q. And isn't it a fact that you informed your workers that "One of the greatest reasons, if not—

MR. SYME:

I object to that, Your Honor.

THE COURT:

Oh, I can't prevent the question being asked.

MR. HIRSCH:

Of course not. I am asking—

MR. SYME:

But you are reading from the paper.

THE COURT:

Let me see what you are going to ask him.

(Discussion at side bar.)

THE COURT:

I think it is proper cross examination. I will permit you to ask the question. I will overrule the objection.

MR. KATZ:

I would like to note of record, if Your Honor please,—

THE COURT:

It must be followed—we have to adjourn very shortly; yes, you may place your objection, Mr. Katz, on the record.

MR. KATZ:

Yes, I object to counsel for the plaintiff being permitted to read from a document that is not in evidence.

THE COURT:

All right, that is overruled. The witness says that he sent it out. Now, you read him that one part and then ask him the next question, which you—

MR. HIRSCH:

Well, I want the preliminary question.

BY MR. HIRSCH:

Q. This document informed the workers that during the year 1937 you were successful in signing up thirty-seven new union contracts which were closed shops for the first time?

A. That is right, that is right, I read it.

Q. Now, isn't it a fact that in the same document you said to all the workers as follows:

"One of the greatest reasons, if not the greatest, for the complete organization of the hosiery industry in the past year has been the political affiliations, political prestige and contracts that I have built up throughout the city for our Union through political activity."

First, in my whole-hearted support as the lone Labor Leader in Philadelphia to back Wilson when he ran for Mayor, * * *

Did you or did you not say that to your workers?

A. In there? Correct.

Q. Yes.

THE COURT:

Now, then, you may ask him, in order to show the relevaney, you may ask him whether that had any reference to the sit-down strike proposition.

MR. HIRSCH:

Well, I want to ask one further question, and then I will go into that, if I may.

THE COURT:

All right, let's get through with it.

BY MR. HIRSCH:

Q. I show you a report of the executive board meeting of the Full Fashioned Hosiery Workers dated July 13, 1937, and ask if that is a copy of the report that your union prepared.

(The witness examined the report.)

THE COURT:

You have got a different proposition here. This is not something that he wrote—

BY THE COURT:

Q. Did you write this yourself?

A. No, I—

MR. HIRSCH:

This is his report, sir. This reports his speech to the executive board.

THE COURT:

Well, all right, just ask him whether this statement made there is a correct statement of your report or your speech or your remarks.

MR. SYME:

Let me see that.

BY THE COURT:

Q. All right, what is the answer?

MR. SYME:

Incidentally, I think, Your Honor, in addition to all of this, if he is going to introduce any of these things he ought to read the entire thing,—

THE COURT:

Oh, no.

MR. SYME:

—starting out with the string band they had at the meeting.

THE COURT:

Mr. Syme, he is not introducing anything. He is merely asking the witness what he said. Now, the witness is able to answer these questions, and the matter has a logical connection with the issue involved, the issue involved of whether the union sponsored and authorized and directed generally a program of sit-down strikes, one of which was the Apex strike. Now, here is a suggestion that there were certain political affiliations, and in his proposition to me Mr. Hirsch

said he was going to follow that by asking whether or not that had reference to the ability to carry on sit-down strikes.

Now, go ahead, and ask along that line.

MR. HIRSCH:

I didn't get the answer to this question.

THE WITNESS:

The answer is, no, I did not make the statement.

THE COURT:

All right, now, then,—

MR. HIRSCH:

I will have to examine—

THE COURT:

—follow up as you suggested.

MR. HIRSCH:

Well, then, I want to examine on this, then.

THE COURT:

Oh, you can do that tomorrow. Now, let's—

BY MR. HIRSCH:

Q. Now, isn't it a fact, Mr. Leader, that the reason your union in 1937 adopted the technique of using the sit-down strike as a means of forcing employers to sign closed shop agreements—and particularly, isn't it a fact that you adopted that technique in the Apex Hosiery Company case—and that your union adopted that technique in the Apex Hosiery Company case, because you had political stand-in with Mayor Wilson in the City of Philadelphia?

A. That is absolutely not so.

Q. And, therefore, the statement that you made to the—withdraw that question.

Did you or did you not have political stand-in with Mayor Wilson in the City of Philadelphia?

MR. SYME:

Oh, I object to that, Your Honor.

A. What do you mean by that?

MR. SYME:

I don't see, certainly, what relevancy Mr. Leader's personal life has to this case.

THE COURT:

Just a minute. Now, just let me have this statement.

MR. SYME:

You might as well ask him how many children he has!

BY THE COURT:

Q. Now, the question is—just a minute, now—the question is whether this reference that you made in this bulletin that was issued to your political connections and affiliations and prestige had any connection—or, did you have in mind when you made that statement any connection with the ability or permission on the part of the authorities to carry on sit-down strikes?

A. Your Honor, the answer is absolutely no.

THE COURT:

All right. Now, then, let's continue the examination tomorrow.

MR. HIRSCH:

Now, may I have this marked for identification,—

THE COURT:

Oh, yes.

MR. HIRSCH:

—Plaintiff's Exhibit—whatever the next number is.

(Circular entitled "Attention—Hosiery Workers", signed by William M. Leader, president, was marked Exhibit P-19 for identification.)

THE COURT:

All right, gentlemen. Adjourn until tomorrow morning at ten o'clock.

(Adjourned until Friday, March 17th, 1939,
at ten o'clock A. M.)

Philadelphia, Pa., March 17, 1939

• Fifth Day

Defendants' Evidence (Continued)

THE COURT:

All right, gentlemen, are we ready to proceed in the Apex Hosiery matter?

MR. SYME:

Yes.

MR. HIRSCH:

Ready.

THE COURT:

I believe Mr. Leader is on the stand.

WILLIAM LEADER, recalled.

Cross Examination (Continued)

MR. HIRSCH:

I would like the photostatic, which is agreeable to the attorney for the defendant, to be marked Plaintiff's Exhibit 20.

MR. SYME:

I object to introducing anything in evidence by Mr. Leader with respect to any bills or with respect to any receipts.

MR. HIRSCH:

I am only having it marked.

MR. SYME:

He is not qualified.

THE COURT:

There is nothing offered in evidence; it is merely marked for identification.

(Photostatic copy of bill dated May 7th, 1937, from Weil's Curiosity Shop to Full Fashioned Hosiery Workers' Union, Philadelphia, Pa., was marked Exhibit P-20 for identification.)

BY MR. HIRSCH:

Q. Mr. Leader, when we were finishing yester-

day I was questioning you about the political phase of your union activities, as expressed by you in your letter to all of the members, which you admitted sending.

MR. SYME:

I object, Your Honor. Are you going to admit testimony with respect to a political phase of Leader's activity?

THE COURT:

Well, Mr. Syme, no question has been asked yet, I don't know what the question is. I don't know how to rule on something that has not been asked. Mr. Hirsch is just saying what he was saying yesterday. Better wait until he asks the question.

BY MR. HIRSCH:

Q. In addition to what I asked you yesterday, isn't it a fact that at a meeting of the executive board of the Federation of Full Fashioned Hosiery Workers—which is your union—held on Tuesday, July 13, 1937 you made a report to that meeting in which you said that a group of former Apex workers were making preparations to go back to work, and that your local should as long as they had the friendship of the City Government make hay while the sun shines. Did you or did you not make that report to the executive board of your union?

A. I did not make them remarks.

Q. I show you this report again and ask whether or not that is a report of the meeting of the executive board on July 13th, 1937.

MR. SYME:

Just one minute, Your Honor. Mr. Leader

doesn't prepare reports of the executive board.
He is not the secretary of the union.

THE COURT:

That is right.

MR. HIRSCH:

That is not necessary, sir, I submit.

THE COURT:

I know, but it is not a question of what that is. You can show Mr. Leader that and ask him whether in view of what he reads there he has any change to make in what he said, something of that sort you can ask him, but you cannot ask him what that is unless he prepared it or knows something about it.

MR. HIRSCH:

Well, I submit, sir, that the president of this union can be asked, at least,—

THE COURT:

Oh, I know,—

MR. HIRSCH:

—whether he knows anything about it.

THE COURT:

I know, but all you want to know is whether that causes him to doubt or change the statement that he just made. Now, that is the question to ask, and I will ask him that.

BY THE COURT:

Q. Mr. Leader, after reading that paper that Mr. Hirsch hands you, have you any reason to change the statement that you just made?

A. Well, Your Honor, I recall making a report

to our executive board on Tuesday, July 13th, and the report was along the general lines of organization activities of our union and all unions with reference to the liberal government which we were having, both in the City and in respect to the Government. I didn't make statements, as is stated in this report.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Does that mean that the person—strike that question.

Who prepares that report, the secretary of your union?

A. The secretary prepares reports of our union, that is correct.

Q. And those reports are then mimeographed in form similar to that, are they not?

A. That is correct.

Q. So that the secretary erroneously reported that on July 13, 1937 you said to the meeting of the executive board that this local should as long as they have the friendship of the City Government make hay while the sun shines?

A. That is correct.

MR. HIRSCH:

Have that marked for identification as Plaintiff's Exhibit 21.

(Copy of minutes of the executive board dated July 13, 1937 was marked Exhibit P-21 for identification.)

BY MR. HIRSCH:

Q. Read through this report and tell us wherein in any other respect it is incorrect.

MR. SYME:

Your Honor, I object to that.

THE COURT:

Oh, yes, I really don't think it is worth spending the time on. I doubt if it has any real bearing on the case.

MR. HIRSCH:

I think it has a very important bearing, sir.

THE COURT:

This is made--

MR. HIRSCH:

During the pendency of the strike.

THE COURT:

No, it was made after the evacuation of the property.

MR. HIRSCH:

Not before the strike had been settled, sir.

THE COURT:

Well, I know, but it is very remote. It seems to me it is extremely remote, any bearing it may have on the real issue we are trying.

THE WITNESS:

Your Honor, could I make this explanation? In one part here it says Leader then spoke for thirty minutes, and it has got about a ten-line report on what Leader said, and I can say an awful lot in thirty minutes, you will agree.

BY MR. HIRSCH:

Q. I didn't say that that report contained everything you said. I am only asking whether what that report contains—

A. And I—

Q. —is correct.

A. And my answer was, the report in respect to workers going back to the Apex, in the language which states Leader said that we should make hay while the sun shines is incorrect. I did not say it.

Q. Now, Mr. Leader, you said yesterday that you knew very little or nothing about the fact that your union maintained a strike kitchen, is that correct?

A. Oh, Your Honor, could I make an explanation at this time which will perhaps save a lot of questions which—

THE COURT:

Well, if it is an answer to the question,

MR. HIRSCH:

No, you just answer my questions. I object to your saving me any time.

MR. SYME:

Now, Your Honor, when Mr. Hirsch asks a question such as that, "You said that you knew nothing about the strike kitchen?", the inference is that Mr. Leader is being evasive. Now, an answer by Mr. Leader that might clarify what his duties and obligations are—

THE COURT:

I don't know what you are arguing about, gentlemen. The question has been asked. He can answer it.

MR. SYME:

All right.

THE COURT:

If his answer is directed to the question he can certainly answer in his own way. He is entitled to do that. I don't know what—

THE WITNESS:

All right, will you repeat the question?

THE COURT:

—there is an argument about.

BY MR. HIRSCH:

Q. Didn't you testify yesterday that you knew very little or nothing about the fact that the union maintained a strike kitchen where food was prepared for sit-down strikers?

A. Well, I know—the Judge has stated I can answer that in my own way.

THE COURT:

Surely.

MR. HIRSCH:

Go ahead, I have no objection.

A. (Continued) I know that for years we have had kitchens set up, both for strikers and for unemployed people. I know we have at times had kitchens set up in our own union, where we give out hundreds of pairs of shoes to people who needed shoes, clothes to people who needed clothes, I know for a period of many years we give out all kinds of relief to unemployed and strikers. I know that kitchens were set up from time to time. In respect to the set-up of the kitchen, I have nothing to do with that.

I am the president of an organization, that doesn't have the power to execute the orders and give the orders to someone else, we have different committees set up with that authority. The authority of setting up kitchens, and so on, is in the hands of an elected group of trustees. I know there were kitchens at all times, but I know nothing about the set-up of the kitchens.

BY MR. HIRSCH:

Q. I am talking about a strike kitchen that you maintained in 1937.

A. I am talking about strike kitchens and other kitchens. They come under the same category with our union.

Q. When was the strike kitchen that was located at 4600 Ditman Street set up?

A. I don't know, some time during the year of 1937.

Q. And when was it closed?

A. I couldn't say.

Q. Did you have anything to do with the closing of it?

A. I did not.

Q. Anything to do with the opening of it?

A. I did not.

Q. Anything to do with the strike kitchen in so far as your making any recommendations or giving any orders were concerned?

A. I did not.

MR. HIRSCH:

Produce the minutes of September 11th of your union, please, 1937, which have been subpoenaed.

BY MR. HIRSCH:

Q. You are sure of that statement?

A. That is correct.

MR. HIRSCH:

All right, minutes of the general membership of September 11, 1937.

BY MR. HIRSCH:

Q. Who keeps the minutes of the general membership, Mr. Huey Brown?

MR. SYME:

He is here.

A. The secretary, correct.

BY MR. HIRSCH:

Q. As far as you know, does he keep them accurately?

A. As far as I know.

MR. SIMONS:

Do you have an excerpt?

MR. HIRSCH:

I have an excerpt, sir. I would like to have the minutes themselves. I want the whole minutes.

MR. SIMONS:

I will bring them up. They left them at the office.

MR. HIRSCH:

All right. If I may use the excerpt meanwhile, then, we will supply the minute during the recess.

MR. SIMONS:

Yes,—

MR. HIRSCH:

All right.

MR. SIMONS:

—if that is the excerpt.

BY MR. HIRSCH:

Q. Well; counsel has agreed that I have an excerpt here made from the minutes of the regular membership meeting of Branch 1 held on September 11, 1937, and that I may use it as if it were the original. I read you that excerpt. It is headed "Report of William Leader", and I am only reading that part that pertains to the strike kitchens, of which you know nothing:

"My next suggestion is to do away with the kitchen immediately. Now that all the strikes are being conducted on the outside I do not believe it is a practical thing from the financial end to keep this kitchen going."

Did you or did you not make that statement to the general membership meeting of Branch 1 on September 11, 1937, which is recorded in the minutes of your union?

A. I did not.

Q. And, therefore, Mr. Huey Brown, the secretary, was wrong when he put that in?

A. That is correct.

MR. HIRSCH:

I ask to have this marked at the moment for identification as Plaintiff's Exhibit number 22,

and that I may substitute the original printed when we have it supplied.

MR. SIMONS:

What date is that, sir?

MR. HIRSCH:

September 11, 1937.

(Excerpt from minutes of the regular membership meeting of Branch 1 of September 11, 1937 was marked Exhibit P-22 for identification.)

BY MR. HIRSCH:

Q. Is it the practice of your union when you hold meetings to read the minutes of the preceding meeting?

A. It is.

Q. And so far as you know, you testified yesterday you presided at all meetings of the general membership in 1937?

A. Yes, practically all.

Q. What happened at the meeting which followed September 11, 1937 when that particular minute was read and you heard it? What did you do about having it changed?

A. I did not hear it read.

Q. I ask you to produce any account which shows that a strike kitchen was maintained by your union at any time during the five-year period preceding 1937.

MR. SIMONS:

Now, wait, if Your Honor please,—

MR. SYME:

Now, wait a minute. Your Honor, I don't know whether you heard Mr. Hirsch's last question. Mr. Hirsch now is asking Mr. Leader to produce an account of any strike kitchen that was maintained in the last five years.

MR. HIRSCH:

He can do that. You are here, the secretary is here, and the treasurer is here.

MR. SYME:

What pertinence, what relevancy has that?

MR. HIRSCH:

Credibility.

MR. SYME:

Credibility? We aren't going to give you records to prove Mr. Leader's credibility.

MR. HIRSCH:

No, I want to prove it is not credible.

MR. SYME:

Well, then, you cross examine him.

MR. HIRSCH:

That is what I am doing.

MR. SYME:

You asked for our records to prove it for you.

MR. HIRSCH:

I submit I have the right to cross examine and make him substantiate his statements. He says they have always had strike kitchens. Now, they have regular books of account and they have an account called Kitchen Expense.

THE COURT:

I think it is entirely proper for you to call on the defendant to produce it. Mr. Leader may not be the officer who is in charge of it, but you can call on the defendant to produce it.

MR. SIMONS:

If Your Honor please, I don't think asking a question at this time, when the witness is on the stand, to have him produce books for five years past at this time is proper.

THE COURT:

Well, now, gentlemen, do you want to produce it or don't you?

MR. SIMONS:

If he has anything in particular—

THE COURT:

Mr. Hirsch is suggesting—now, let's get it clearly—Mr. Hirsch is suggesting that until the period of the sit-down strikes there were no strike kitchens maintained. Now, you are in a position to prove that or disprove it, entirely as you see fit, and if you do not care to disclose your records on that point, say so now, and Mr. Hirsch will then have to pursue whatever remedies he has.

MR. SIMONS:

If Your Honor please, that is not our position at all.

THE COURT:

Well, that is my position. Now, whatever you want to do about it, don't argue it, that

is all there is to it. If you say, "No, we won't produce them", say so.

MR. SIMONS:

No, no, I said to Mr. Hirsch if you ask us for any particular thing—

THE COURT:

He is now asking—

MR. SIMONS:

He can't do it now.

THE COURT:

He is now asking you for your records relating to the maintenance of strike kitchens during the five years preceding the period of these sit-down strikes.

MR. SIMONS:

Well, Mr. Hirsch certainly cannot expect us to have it here in court at this time.

THE COURT:

No, no, that is not required.

MR. SYME:

If Mr. Hirsch is making that request of us we will take it up with our clients, the proper people, not Mr. Leader.

MR. HIRSCH:

Mr. Leader is a party-defendant and a client.

THE COURT:

He is now making a request. Mr. Leader obviously hasn't got it with him here, but it is entirely up to you gentlemen to say what you are going to do about it.

MR. HIRSCH:

I make the request and ask for the production.

MR. SIMONS:

All right.

BY MR. HIRSCH:

Q. Now, Mr. Leader, you indicated that the union did not in any way order, authorize or support sit-down strikes. Isn't it a fact that during the year of 1937, and particularly during the period of May 5th to July 27th, which was the period during which the Apex plant was shut by reason of a strike, your union in the maintenance of a strike kitchen for that limited period spent, as is shown by your books, accounts number 610, 611, 612, 613, 614 and 615, over twenty-three thousand dollars for food and for labor and expense of maintaining that strike kitchen.

A. My answer to that is if our books show that, then certainly the union spent that money for food to support strikes.

MR. HIRSCH:

I ask for the union to produce the accounts or agree that the accounts do show that approximate figure. I have the figures here which we have already obtained.

MR. SIMONS:

If Mr. Hirsch had wanted that, we will agree that we supported a kitchen,—

MR. HIRSCH:

"I want to agree as to the figure—

MR. SIMONS:

—there is no dispute on that, there is no dispute—

THE COURT:

I understand Mr. Hirsch is asking you to either agree that the figure is correct or produce the accounts supporting it.

MR. SIMONS:

May we have an opportunity to check the figure?

THE COURT:

Oh, yes.

MR. SIMONS:

I don't know.

MR. HIRSCH:

Let's assume that is correct, in round figures, subject to check of Mr. Simons, and we will correct the figure in any way that his check indicates.

THE COURT:

All right.

MR. SIMONS:

If the amount is important we would like to check it. If it is merely a question that we supported it, we admit it.

MR. HIRSCH:

I want the amount on the record. You can check that figure. I will check it with you later.

BY MR. HIRSCH:

Q. You testified yesterday that you had no sepa-

rate strike fund. You didn't mean that your union didn't carry on its books separate accounts showing strike expense, direct strikers pay-roll, payments to trustees for distribution to strikers, and other items, do you?

A. Let me answer that question by saying funds of our union is in the custody of the trustees.

Q. Isn't it a fact, Mr. Leader, that during the period beginning May 6th, 1937 and thereafter, while the Apex plant was shut down by reason of the strike, and during the subsequent period, your union, through account known as "Direct Strikers Pay-roll", which was number 620, paid to the Apex workers who were members of the union, including the sit-downers, a sum of approximately forty-three thousand dollars?

A. If our books show that I will agree that the money was given to strikers for relief purposes.

MR. HIRSCH:

May I have the exhibit of the vouchers, please? Subject to check with your counsel, I think that the figure will be approximately forty-three thousand dollars, covering the twenty-one thousand dollars that have already been offered in evidence as Plaintiff's Exhibit number 10. Will you check those?

BY MR. HIRSCH:

Q. You said you had fifteen thousand members in your union?

A. Approximately.

Q. In the City of Philadelphia?

A. Approximately.

Q. What is the average wage of your members?

MR. SYME:

I object to that, Your Honor.

A. What mill?

THE COURT:

Yes; I—

MR. SYME:

I wasn't allowed to go into that. I am perfectly willing to open up that whole question.

THE COURT:

Gentlemen, I would be glad if you would just state your objections without argument,—

MR. SYME:

Oh, I am sorry, Your Honor.

THE COURT:

unless the Court desires argument. I think that that is not relevant.

MR. HIRSCH:

I won't press it.

BY MR. HIRSCH:

Q. Testimony was given by the plaintiff, through six or seven mill owners, that on May 6th, 1937 their shop committees requested them to permit their employees to go down to the Apex mill to demonstrate or picket. Did you have anything to do with that?

A. I did not.

Q. Would you have anything to do with such a thing in your usual and ordinary duties?

A. Such a thing as what?

Q. Telling the shop committee to have members of a shop go down to some mill and demonstrate?

A. I would not.

Q. And did you at any time ever advise any mill owner, or the shop committee in any mill where you had a contract, or the members of any mill where you had a contract, that they should come to another mill on a particular day and demonstrate or picket?

A. I did not.

Q. You are sure of that?

A. I am sure of it.

Q. I show you two letters, dated May 21st, 1937 and June 24th, 1937, and—

MR. SYME:

Would you mind letting me see those?

MR. HIRSCH:

I don't mind at all, sorry.

(The letters were shown to counsel.)

BY MR. HIRSCH:

Q. —and ask you whether or not the signature appearing as being William Leader, president, is your signature, and whether or not that is a letterhead of your union?

(The witness examined a letter.)

A. That is not my signature.

BY MR. HIRSCH:

Q. Is it the letterhead of your union?

A. It is a letterhead of my union, that is correct.

Q. Is that a letterhead of your union?

(A letter was shown to the witness.)

A. That is a letterhead of our union.

Q. Is that your signature?

A. That is not my signature.

Q. In other words, there are two letterheads here, dated May 21, 1937 and June 24, 1937, which have at the bottom the name William Leader in handwriting, but you say you didn't sign it?

A. That is correct.

Q. Did you ever see letters like these?

A. I did not.

Q. Isn't it a fact that on May 21, 1937 you addressed a letter headed "Greetings", to some mill in Philadelphia, in which you said as follows: You are hereby notified to have all members—

THE COURT:

Now, if the witness—I don't think you can read the letters into the record if the witness says he didn't sign them.

MR. HIRSCH:

I don't think, Judge Kirkpatrick, that should preclude me letting it go to the jury on the question of whether he did or did not sign it. It is a question of credibility.

THE COURT:

Well, you can prove he did it in some other way. Until there is some proof that he signed those letters or knows something about them I don't think you ought to read the contents of them to the jury.

MR. HIRSCH:

Well, I submit, sir, these letters should go to

the jury on the question of credibility of the witness.

THE COURT:

Oh,—

MR. HIRSCH:

They may or may not believe his testimony.

THE COURT:

—there is no evidence he wrote them yet. If there is some evidence that that is his signature, or you show some person that knows he wrote it, that is quite proper, but you have nothing here but a piece of paper that the witness said he didn't sign.

BY MR. HIRSCH:

Q. Do letters go out from your union over your signature in mimeographed form without your authority, consent or knowledge?

A. Letters that go out with my authority I sign.

Q. Will you answer my question?

MR. SYME:

He answered his question.

THE COURT:

No, no, he didn't.

THE WITNESS:

All right, then, ask me it again.

BY MR. HIRSCH:

Q. Do letters go out from your union over your signature, or what is purported to be your signature, without your authority, consent or knowledge?

A. Well, I don't quite understand that yet. Do

you mean do I send letters out without my signature?

BY THE COURT:

Q. No, what he means is, does anybody else send letters out without your authority or knowledge, and sign your name to them?

A. Not to my knowledge.

BY MR. HIRSCH:

Q. Would your union on its own letterhead send out a letter which purports to be signed by you without at least knowing that it had consent to sign your name to it, or that you had knowledge of it, or that you approved it?

A. I would not know.

Q. These are your letterheads, though, aren't they?

A. They are our letterheads, that is correct. We have them by the thousands.

Q. Did you ever see any mimeographed letters go out to various shops?

A. Did I?

Q. Yes.

A. Yes.

Q. On various matters?

A. On various matters.

MR. HIRSCH:

Have these marked for identification, please, Plaintiff's Exhibits 23 and 24.

(Letter dated May 21, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, was marked Exhibit P-23 for identification.

Letter dated June 24, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, was marked Exhibit P-24 for identification.)

BY MR. HIRSCH:

Q. Isn't it a fact that during the pendency of the strike at the Apex plant the members of other mills came down and picketed on a regular schedule?

A. I do not know.

Q. What do you know about the activities of your union as president?

A. Well, now, I am ready to go into a full explanation if the Court will allow me on just what I know about our union.

THE COURT:

Well, it is a pretty general question. I see no reason why you should not, if Mr. Hirsch wants it answered.

THE WITNESS:

All right, then,—

BY MR. HIRSCH:

Q. Don't you know—

THE WITNESS:

Can I answer, Your Honor?

MR. SYME:

You asked the question, let him answer it.

THE COURT:

Yes.

THE WITNESS:

The question is, what do I know about our union?

MR. HIRSCH:

Yes, I would like to know that.

THE WITNESS:

I joined our union in 1913 as a member working on the machine. I have been a member of that union since. I have been active on shop committees when in the shops.

In 1930 I was elected vice-president of the union, at a regular election of the membership.

In 1934 I was elected president, and have been president since. It has been my continued job since I have become a member of the union to try to help to improve conditions in our union. I have worked along in every manner, shape and form I can to get the interest of the working class, to improve their conditions, and also to better their working hours, shorten their hours and improve their pays. I have talked to many meetings of the hosiery workers in the City of Philadelphia. I watched the union grow from a membership—

MR. HIRSCH:

Now, if Your Honor please,—

THE WITNESS:

—of a few hundred people—

MR. HIRSCH:

—I asked him what he knew about the activities of the union,—

THE WITNESS:

Yes, I am telling you.

MR. HIRSCH:

—and I didn't ask him for a stump speech.

THE COURT:

Yes, I think it is going beyond the question. The question is what is your connection with the union activities, and what do you know about the activities that took place in a strike, or something of that sort? What sort of things are brought to your attention?

THE WITNESS:

All right.

MR. SYME:

Your Honor, may I just supplement it by saying it is merely duties as president of the union?

THE COURT:

Well,—

MR. SYME:

I think that—

MR. HIRSCH:

I didn't ask that, Mr. Syme.

THE COURT:

He asked what he knows about—but it has to do not with the history of the union, but what is going on. What he wants to know is whether you know—whether it is part of your official duties or not, but what do you know about things that are being done, particularly in connection with the strike? How much are you consulted?

THE WITNESS:

Well, can I take the year of 1937?

THE COURT:

Yes.

THE WITNESS:

Yes, the year Mr. Hirsch is interested in. At the start of 1937 our union had continued to attempt to organize shops that were not unionized and didn't have conditions that the union shops had and wages which the people earned in the union shops. My job as the president of the Local was to address meetings of workers whenever called on, to find out their grievances, to explain to them the rights under the Wagner Act, the National Labor Act, which consumed much of my time, continually, meetings in small halls, or meetings that were called at the union, was part of my job, night work, day work, and Saturday work; and when we would come to a situation where a group of people felt that they wanted to better their conditions and wanted a representative to go in and present their case, my job as president of the union was to represent those workers, once I was chosen. I would meet with management, which I had on several occasions in different shops, after the situation was explained, and if there was no satisfactory answer the workers would vote on the question of a strike or any other action they may see fit. If a strike was declared I would explain to them their rights under a strike, their rights under the Wagner Act, to picket peacefully at all times, and so on.

After a strike was declared I would continue

to attempt to start negotiations with the manufacturer with the hope of ending the strike. I had the authority by my union to conduct negotiations, to take up grievances of workers in union shops, to better at all times their conditions, and to go along with the idea of getting new annual contracts, better contracts than the year we had before. Mine is a question of organization and authority to take up grievances and to declare strikes if the workers so elect to declare one, and settle grievances after they go into impartial chairman hearings, which we had on many occasions with our various agreements, and which take up much of my time preparing cases, and then arguing before an impartial chairman, negotiating with manufacturers on getting agreements, and individual agreements which we had up to the last agreement that run out.

Now, that takes up quite a bit of my time. I have no authority with the finances of the union, and that is why I perhaps appear that I don't know much about it, which is correct. My time is entirely taken up with settling grievances, negotiating agreements for fifteen thousand hosiery workers.

BY MR. HIRSCH:

Q. Now, then, Mr. Leader, I am going to ask you to answer my question, as to what I want to know. What do you know about what goes on during the pendency of a strike? Do you have anything to do with the picket lines, or do you know that there is such a thing as a picket line around a mill?

A. My answer to that is that I hold a meeting

of the workers any time that our union or they declare a strike, I explain to them their rights under the law and under the Wagner Act, when a strike is declared I explain to them their rights to picket. I tell them at all times their constitutional right is that they can picket whenever they so desire, but at no time does the union ever order them to picket.

Q. So that these letters on union letterheads, with your signature purporting to be on it,—

MR. SYME:

I object to that.

THE WITNESS:

It isn't my signature.

MR. SYME:

I object to the question. The letters have not been proved. There is no evidence as to—

MR. HIRSCH:

We will prove them.

BY MR. HIRSCH:

Q. Mr. Leader,—

MR. SYME:

Well, when you prove them you can ask the question.

THE COURT:

I think he—

BY MR. HIRSCH:

Q. Look at the lower right-hand corner. The initials on this letter dated June 23, 1937, marked Plaintiff's Exhibit 24, are WL, in large type, and in small type. What does "WL" stand for?

A. I did not sign this letter. I know nothing about it.

Q. Well, now, letters which you sign do have "WL" on the bottom, do they not, in the lower left-hand corner?

A. I do not know.

Q. Did you ever see the signature "WL" and the stenographer's signature—

MR. SYME:

If Your Honor please, I object—

MR. HIRSCH:

Oh, Mr. Syme, you can—

MR. SYME:

Now, Mr. Hirsch,—

MR. HIRSCH:

All right, go ahead.

MR. SYME:

Mr. Leader has testified to the fact that he did not sign the letter and he knows nothing about the letter. If Mr. Hirsch wants to produce other competent testimony to prove he did sign the letter that is his privilege, but he is asking the same question so many times—

MR. HIRSCH:

I am asking a different question.

MR. SYME:

He has answered it ad nauseam.

MR. HIRSCH:

If Your Honor please, I am going to find out what happens when he writes letters and what these initials mean.

BY MR. HIRSCH:

Q. I am asking you, when letters go out on the union stationery, on which your signature does in fact appear, do I understand you don't remember, or you have never seen your initials in the lower left-hand corner?

A. When a letter goes out with my signature on it I read the letter and sign it. I do not know what is below the signature.

Q. In other words, the initials that appear in the lower left-hand corner, you have never seen those before?

A. I would not say I have not seen initials in the lower left-hand corner.

Q. Have you ever seen your initials in the lower left-hand corner?

A. I would say perhaps I have and perhaps I have not. I do not recall if I specifically noticed at any time my initials in the lower left-hand corner. I am concerned with the letter and with what I signed.

Q. And if it was your letter and your initials appeared they would be "WL" as in that letter, wouldn't they?

A. If my initials appeared they would be WL, or WML, either one.

Q. All right. Whose initials are the small letters, "mk"? They are the stenographer's who wrote them, are they not?

A. I do not know.

Q. How many office girls have you?

A. I have a girl by the name of Elsie Rau—

Q. I am talking about '37, now, not now. How many office girls did you have at that time, and who were they?

A. At that time?

Q. Yes.

A. Had Mary McCourt.

Q. Mary McCourt. How do you spell that?

A. M-c C-o-u-r-t.

Q. All right.

A. Elsie Rau, R-a-u, Helen Lafferty, Alice Haney, Mildred Kelly.

Q. Mildred Kelly's initials are mk, aren't they?

A. I believe so.

Q. And they are the initials that appear in the lower left-hand corner of that letter. Look at it.

(The letter was shown to the witness.)

A. That is the initials that are in the lower left-hand corner, that is correct.

BY MR. HIRSCH:

Q. Does she take stenography? Does she type?
Is she a typist?

A. She—

MR. HIRSCH:

Now, wait a minute, Mr. Syme, don't try to save the witness.

BY MR. HIRSCH:

Q. Is she a typist?

MR. SYME:

Oh, yes, she is a typist, we will admit. She is Jack Kelly's niece, if you care to know. That is some more information for you. This cross examination doesn't lead anywhere, Your Honor.

THE COURT:

Now, just a minute. We won't have any more

demonstrations from the audience. We will have no laughter. You will all be removed from the court room if this continues. Do you understand? There is no reason at all to keep you in here. We will send you right out if that goes on.

MR. SYME:

Your Honor, it is admitted, apparently there is some girl who took it, and apparently there is some girl who put these initials on, but Mr. Leader has testified to the fact he did not sign the letter, that he doesn't know about the letter. Now, I don't see what purpose all this cross examination is leading to.

MR. HIRSCH:

It is leading to the fact that I will discredit the witness and his testimony that he never ordered any picket lines down at the Apex plant by letters which were sent out over his signature.

MR. SYME:

Your Honor, I object to that being said before the jury. Mr. Hirsch is trying to get in indirectly what he cannot get in directly.

MR. HIRSCH:

No, I am not. I am going to get it all directly.

THE COURT:

Well, now, gentlemen, the witness, it seems to me, has been fully enough cross examined on the point. If you have testimony that it was his letter you are fully—

MR. HIRSCH:

I am getting it now, Judge Kirkpatrick. I found out who "mk" is, and I intend to subpoena her.

THE COURT:

Surely.

MR. HIRSCH:

I am asking him if she is a stenographer.

THE COURT:

He says so.

MR. HIRSCH:

No, Mr. Syme said it. He didn't say so. Do you admit that, Mr. Syme?

MR. SYME:

I admit that.

BY MR. HIRSCH:

Q. Is she still in your employ?

A. She is not.

Q. Where does she live, do you know?

A. I don't know. You could probably find out from our office records the address when she worked there.

Q. Do you know her parents' names?

A. I do not.

Q. I show you this letter of May 21, 1937, in the lower left-hand corner of which appear the initials "j. b.", followed by "m. e." Doesn't that indicate that that letter was dictated by Joseph Burge, who was the vice-president of your union, and who signed that letter?

(The witness examined the letter.)

A. I would not know.

BY MR. HIRSCH:

Q. And don't the initials "m. c." stand for Miss McCourt?

MR. SYME:

Your Honor, if there is a question of Joseph Burge, Joseph Burge—

THE COURT:

Well, it does seem so futile to ask the witness whether Joseph Burge's initials are j. b., or Mary Kelly's initials are m. k. That is obvious. We all know that. What is the use of wasting time with that? If you know, go ahead and prove it, it is perfectly proper, any testimony you have on point is all right, but we have spent a great deal of time on the question of whose initials are on the—

MR. HIRSCH:

Well, only in this way have I found out who wrote the letters, and I intend to bring those persons in.

THE COURT:

I understand.

BY MR. HIRSCH:

Q. What is McCourt's first name, did you say?

A. Mary.

Q. Is she still in your employ?

A. She is.

Q. Up at headquarters?

A. She is.

Q. All right. Yesterday you testified there were twenty-two sit-down strikes in the City of Philadel-

phia. I now ask you whether or not you know of any mill at which a sit-down strike was conducted in the City of Philadelphia in 1937 in which hosiery workers were involved where the owner of the mill was permitted to manufacture and ship his merchandise during the period of the sit-down strike.

A. I know nothing about that.

MR. SYME:

Your Honor, I ask that that question be stricken from the record.

THE COURT:

I will deny the motion.

BY MR. HIRSCH:

Q. Now, let's review what happened in 1937. You sent letters to all of the manufacturers in the City of Philadelphia with whom you did not have closed shop agreements enclosing a copy of a closed shop agreement and asking them to agree to sign it, did you not?

A. Approximately all of them.

Q. And then you endeavored to confer and persuade them to sign it?

A. I endeavored to negotiate with them.

Q. When your negotiations failed in twenty-two cases sit-down strikes occurred, did they not?

A. I would say that in approximately twenty-two cases where negotiations failed strikes were declared.

Q. And in those cases the union did declare a strike, did it not?

A. With the consent of the workers involved, correct.

Q. And in those cases the strike that took place happened to be a sit-down strike?

A. I would say in most cases that what is commonly classed as a sit-down strike come about. We would declare the strike, not a sit-down strike.

Q. Now, then, once a sit-down strike gets under way your union supplies food to the sit-downers, cots and blankets and pillows, if necessary, strike or relief benefits during the period of the sit-down strike, and medical service, does it not, as has been admitted?

MR. SIMONS:

Now, just a second. Do you want to step up here a minute? May we see you a moment at side bar?

(Discussion at side bar.)

MR. HIRSCH:

What was the last?

(The question was repeated by the Reporter, as follows:

“Q. Now, then, once a sit-down strike gets under way your union supplies food to the sit-downers, cots and blankets and pillows, if necessary, strike or relief benefits during the period of the sit-down strike, and medical service, does it not, as has been admitted.”)

A. To the best of my knowledge, in the Apex I testified that that was so. On the other shops I stated I did not know.

BY MR. HIRSCH:

Q. So that you as the president of the union in charge of all strikes didn't know that your union

during the period of May 6th, 1937 until July 27, 1937 spent twenty-three thousand dollars for food in your strike kitchen which went to the sit-downers?

A. I knew that they spent money. Again, let me say that if our records show something and you show me the records I will admit it. I am ~~not~~ trying to disprove that.

Q. But you said you didn't know whether this food was supplied to other mills other than Apex?

A. That is correct. I knew it was supplied to mills.

Q. All right.

A. I do not know what mills.

Q. All right, but it was supplied to other mills?

A. To the best of my knowledge.

Q. Now, then, after the sit-down strike has been in progress you continue your negotiations with the management, don't you?

A. After—

Q. You, personally.

A. After the strike is in progress I always try to continue negotiations.

Q. Yes.

A. Correct.

Q. And in those twenty-two cases where sit-down strikes were in progress your demands were for a closed shop, were they not?

A. That was part of the demands, that is correct.

Q. And you continued your negotiations to obtain that with management, and finally did in every instance, did you not?

A. Among other things I believe that is correct, that every shop we signed up had a closed shop clause in it.

Q. And the sit-down strikes were of a different duration in each mill, were they not, some for a few days, and some for weeks, and some for months?

A. These strikes varied, that is correct.

Q. What happened to the sit-down strike once you union signed up with management?

A. When management would sign with the union we would in most cases come up and in the presence of management notify the workers involved that the strike had been concluded—

Q. And the sit-down—

A. —and the agreement signed—

Q. —would end.

A. —and the strike would be officially declared off.

Q. And the sit-down would end? Did the sit-downers continue on the premises once you had gotten your goal, attained your goal? Do you know of any instance where they continued on the premises as sit-downers?

A. I know of no instance where a strike was concluded that the people did not go back to work immediately.

Q. Including the sit-down strikes?

A. I am talking of all strikes.

Q. And, therefore, in twenty-two instances in Philadelphia in the year 1937 after a sit-down strike had been in progress your union was able to get a closed shop agreement and reap the benefit from that sit-down strike, wasn't it?

A. In at least twenty-two cases where there were strikes and there were signed contracts concluding the strike, the strike was over and the workers and the union both benefited, and the employer.

Q. You spoke of a meeting yesterday—strike

that. Yesterday you spoke of a meeting which was held on May 5th, the day before the sit-down strike at Apex, with some of the Apex employees. Where was that meeting held?

A. At the north-northeast corner of Fifth and Butler.

Q. Fifth and where?

A. Butler.

Q. How far is that from the mill?

A. Approximately three squares.

Q. And who was elected chairman of the workers at that meeting?

A. William Etter.

Q. And how many were present at that meeting?

A. Well, we didn't count them. I would estimate, roughly, approximately a hundred or more.

Q. And at that meeting it was voted to call a strike at the Apex plant the following day if management did not sign your contract?

A. It was voted that unless management would meet with the union officials and the committee that a strike would be declared.

Q. Was that the first time that you or any officer of the union had been authorized to call a strike at the Apex plant if they didn't sign?

A. By the workers?

Q. Yes.

A. Correct.

Q. And was that the first time you had been authorized to call a meeting at the Apex plant by anyone?

A. Call a meeting?

Q. A strike.

A. I was authorized by the executive board to

declare a strike at the Apex shop whenever I seen fit.

Q. How many members according to your union's records did you have among the employees of the Apex Hosiery Company on your books prior to May 6th and on May 6th, 1937?

A. I do not know.

Q. Would it surprise you to know that an examination of your books by a person appointed by this Court disclosed that you had exactly seven members, and I will name them? Would that surprise you?

A. It would not interest me at this time, or then.

Q. Would it surprise you?

A. I do not know if it would surprise me or not. I never give it any thought.

Q. Would you say that was not a fact?

A. I would not say it was not a fact, no.

MR. HIRSCH:

I call on the union to produce pursuant to the subpoena that I have issued on them all membership cards pertaining solely to membership in this union among Apex employees on or prior to May 6th, 1937, and the names of those persons.

MR. SIMONS:

May I just say that Mr. Hirsch's subpoena called for all the membership cards, and it is an index system, that stands about this high (indicating), and we would have to have a couple of trucks to bring it down. Mr. Hirsch told me that it wasn't necessary to bring it down.

THE COURT:

All right.

MR. SIMONS:

If he has copies or excerpts from it—

THE COURT:

I wonder if it is necessary. What is the importance of it?

MR. SIMONS:

I don't know.

MR. HIRSCH:

I think this is very germane to the issue, a sit-down strike being called by a union when according to their records they had eight persons on their rolls,

THE COURT:

Well, but what does it show—

MR. HIRSCH:

—as being members.

THE COURT:

As to the authorization? It doesn't show anything. You are going to argue from it that the union acted unreasonably, and Mr. Syme is going to reply that is the way shops are organized if they are non-union shops. Now, we are not going to get anywhere by that and I don't think it goes to the issue involved here.

MR. HIRSCH:

Well, may I see Your Honor at side bar—

THE COURT:

Yes.

MR. HIRSCH:

—and give you the reasons why I think it is germane!

THE COURT:

Surely.

(Discussion at side bar.)

MR. HIRSCH:

May I put these names on the record?

MR. SIMONS:

Just enter our objection.

MR. HIRSCH:

According to the information obtained from the records of the union by the representative appointed by the Court, the following persons were members of the union during the period preceding May 7, 1937, and were the only employees of the Apex plant who were such members, on May 6th, 1937:

Clifford H. Ferber, Betty Adams (now Weger), L. Geoghegan, J. Gladen, E. Morris, Charles Lehall, Ella Schultz (now Schubert), Peter Wolfert.

BY MR. HIRSCH:

Q. I believe you testified yesterday, Mr. Leader, that after the crowd had broken into the mill and all of the events which you related had taken place, you then left the mill about 4:30 and made a speech over a loud speaker on the sound wagon?

A. At the request of Mr. Meyer, that is correct.

Q. And that as a result of your speech, or as a result of the rain, you didn't know which, the crowd which was then outside immediately dispersed?

A. That is correct.

Q. How many were outside at that time?

A. I would estimate at the corner where I come out, perhaps three or four thousand people, at that corner.

Q. Who were you to tell them to go home,—

A. That is what I asked Mr. Meyer.

Q. —and why did they go home when you told them, if it wasn't for the fact that you brought them there and controlled them and led them, and in every way supervised everything that went on that afternoon?

A. As I said yesterday, my personal opinion is, I think it was the rain.

Q. You made this speech on the table at the request of Mr. Meyer, did you not? Did he ask you to get up on the table and address the mob that was inside his mill?

A. He did.

Q. You wouldn't have gotten up on his table without him telling you, would you?

A. That is correct.

Q. It was after the mob had broken into the mill and the place had been laid waste in the office, was it not?

A. It was after we had the meeting with Mr. Meyer in his office.

Q. And your meeting was after the time the crowd broke in and smashed the office furniture and in every way turned the place upside down, was it not?

A. The place was in great disorder when I went in, that is correct.

Q. And it was at Mr. Meyer's request that you got up on the table and addressed these people—

A. That is correct.

Q. —and quieted them?

A. I did not quiet them.

Q. And it was at his request that you made this speech that you have related?

A. That is correct.

Q. And among other things, after the place had been laid waste and the mob had run through, and people, as you have heard testify here, were sent to the hospital with injuries, you then made a speech in which you asked them not to smoke?

A. That is correct, I made a speech in which I asked them not to smoke.

Q. You wanted them to be very considerate of the plant at that time, didn't you?

A. It was Mr. Meyer's request.

Q. And was it Mr. Meyer's request that on June 10th, 1937 and on June 22nd, 1937, one hundred and thirty-four machines were smashed, causing damage as has been related, costing sixty-seven thousand dollars to repair and replace, was that his request?

A. I know nothing about that.

MR. HIRSCH:

That is all.

THE COURT:

Any redirect? That is all, Mr. Leader.

THE COURT:

We will recess for ten minutes.

(Recess at 11:10 o'clock A. M.)

MR. HIRSCH:

I am through at the moment, but I ask leave to recall Mr. Leader for further cross examination after I have gotten together other information.

THE COURT:

Well, if it appears proper.

MR. HIRSCH:

—along the same line that I have already been questioning him.

THE COURT:

Well, I know, but we don't want to drag it out too much. If it is a proper occasion I will permit it.

MR. HIRSCH:

All right.

THE COURT:

I won't make any commitment about it.

MYLES HIGGINS, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Higgins, you are a member of the Philadelphia Bar?

A. Yes, sir.

Q. You are a member of the New York Bar, is that right?

A. Yes, sir.

Q. You have been practicing law both in Philadelphia and in New York for a number of years?

A. Nearly forty.

Q. Nearly forty years. You are not in any way associated with Branch 1 of the American Federation of Hosiery Workers, or with any of the defendants, are you?

A. No, sir.

Q. In any capacity whatever?

A. No, sir.

Q. Either as counsel or in any other way?

A. No, sir.

Q. Mr. Higgins, were you present in front of the Apex Hosiery mill on May 6th, 1937?

A. I don't recall the exact date, but I was there at the time that these troubles happened. I couldn't identify the date, but I was there at the time that the plant was broken into.

Q. Mr. Higgins, what time did you arrive in front of the mill?

A. As near as I can recall, around one-thirty in the afternoon.

Q. How did you get to the mill? How is it that you were around there?

A. I happened to be in that neighborhood that morning and I heard that there was trouble at the mill and that they were picketing, that the strikers were picketing the mill. I had never seen anything just like that in my life. I just thought as I was in the neighborhood I would go over and look it over, as a matter of curiosity, purely, so I went over.

Q. And you got there at about 1:30?

A. About 1:30, and there were probably two or three hundred people there at that time, as near as I could estimate.

Q. Mr. Higgins, suppose you tell us in your own way exactly what you saw.

A. Well, as time went on crowds of people came from all directions, until about three o'clock, or an hour or so after I got there, there were thousands of people in the vicinity, so much so that the street, the streets, the two streets that I could see—I was at the corner, at the north—at the southwest corner of Fifth and the cross street, I don't know just what it is, just across from the north side of the mill, and the people were coming from all directions, and the whole street was filled with people, not only the sidewalks, but the pavement all the way across, and when a trolley car came along they had to part the people, the trolley car had to just creep along to get through.

Q. Did you see Mr. Leader there at any time?

A. I did, yes.

Q. About what time, do you remember?

A. Well, now, I don't know just exactly what time the doors of the mill were broken into, but it was about a half an hour before that that I saw Mr. Leader.

Q. Well, how did you come to see Mr. Leader?

A. Well, I was talking to a man in the crowd there, and he said, "There is Leader, the head of the union".

Q. And where was Leader at the time?

A. Leader was then right below the doors of the mill on Fifth Street, on the—he was on the pavement talking to some people, and this young man said, "Would you like to meet Leader?"

I said, "Yes, I would like to meet him."

He said, "Come on, I will introduce you to him", and I went over and talked to Mr. Leader.

Q. Yes.

A. For about fifteen or twenty minutes, maybe longer, talked about the condition there, and I told him—

MR. HIRSCH:

Now,—

BY MR. SYME:

Q. Was Leader—

MR. HIRSCH:

—don't tell us your conversation.

THE WITNESS:

All right.

BY MR. SYME:

Q. Was Leader leading anybody at the time, agitating anybody at the time?

A. No.

Q. He was standing with you very leisurely and having a conversation—

A. That is all,—

Q. —for a period of fifteen—

A. That is all he was doing.

Q. —or twenty minutes?

A. That is right. I saw—I then saw about that time one of these things they call a sound wagon.

Q. Yes.

A. Come up, and it stopped on the cross street above the mill, and somebody in there was talking, I don't know who it was, I couldn't see, but there was conversation coming from that sound wagon, and as I recall what they were saying was, they were telling the crowd to be peaceful and not have

any—any disturbance, make any disturbance. That was the burden of his talk.

Q. Mr. Higgins, were there any police there?

A. Oh, yes, yes, in front of the door of the mill were about a dozen or fifteen policemen, were standing shoulder to shoulder in a circle up on the steps. There are four or five steps leading up to the door of the mill, and these police were lined in front of the door in a semi-circle, and then about a half an hour before the outbreak—

Q. Were there—pardon me, I don't want to interrupt you, but were there any other police aside from the police—

A. Oh, yes.

Q. —around there? Were there mounted police—

A. Mounted police came along—

Q. —motor cycle police?

A. Mounted police came along and attempted to ride the crowd down.

Q. What effect as far as you observed did that have on the crowd?

A. Well, it infuriated them. The crowd was peaceful up to the time the police came. When the police came they attempted to ride them down, and about fifteen minutes after that some motor cops came along with side cars, and they didn't go on the trolley tracks, where they could have gotten through, but they rode right into the crowd, and that infuriated the crowd; and it was then—it was after the police came that the brick throwing commenced.

Q. Now, where was Leader when the brick throwing commenced, as you put it?

A. He was standing quietly talking to some friends of his, and talking to me.

Q. You saw him—

A. Yes, I was talking to him.

Q. —when you—you were talking to him?

A. I was talking to him.

Q. Yes. Did you see Leader throwing any rocks?

A. No, he didn't do anything.

Q. Did you see him direct anybody to throw rocks?

A. He did not.

Q. All right. Now, you say he stood with you for about fifteen or twenty minutes, and then what happened?

A. Well, somebody came along—I might preface the remark that when the—there were some bricks or stones thrown at the windows of the building, and they were thrown mostly from the west side of Fifth Street. The police undertook to arrest the throwers of the bricks. Of course, nobody could tell who threw them, I was standing right there, and you couldn't tell. They were mostly thrown when a trolley car came along and was going slowly through the crowd, then from the other side of the trolley car, then the bricks came, the missiles. The police went down alongside the building and undertook to arrest some of the men there, and when they did the crowd wouldn't stand for it, they just simply pushed the police aside and took the prisoner away from them, and that infuriated the crowd. My judgment at the time was that it was the police that caused the trouble, in endeavoring to arrest people as they did. That is just my private opinion of what happened, but I told Mr. Leader that some-

thing ought to be done about it, that that crowd would get out of control.

He said, "Yes, I believe it will," and he said, "I am going to see if I can talk to the management of the mill and see if we can't do something about dispersing the crowd", and he went up to the door of the mill, and there was a grating there outside the glass, and they opened the glass inside and somebody talked to Leader.

Q. Now, you couldn't hear that conversation?

A. I couldn't, no.

Q. You were too far away?

A. I was down on the pavement, I couldn't hear what was said, but at any rate, the door was slammed shut again. Leader came back and said they wouldn't let him in.

Q. And then what happened, Mr. Higgins?

A. Well, it is hard to describe just what happened, the—

Q. Well, how long did you stay there after that?

A. Oh, yes—I stayed there for quite some time, but somebody came up to Leader and said that—that—the—

MR. HIRSCH:

Now, wait a minute, I object to conversations outside of our presence.

BY THE COURT:

Q. Well, did you hear it?

A. I was there, I heard it.

Q. All right.

A. I heard it.

THE COURT:

Well, that is all part of the res gestae, then.
All right.

MR. HIRSCH:

All right.

A. (Continued) This man came up and said that the—that the police or somebody were beating up their fellows down below.

BY MR. SYME:

Q. Yes?

A. And he said, "Bill", he said, "you better come down", so Leader went down to the lower end of the building, down along Fifth Street, and I then crossed to the west side, because the crowd was milling and getting out of control, and I looked for some violence there and I just went to the other side for my own protection.

Q. Yes.

A. I didn't want to be in it.

Q. And you left the scene after that?

A. No, I still stayed. I saw the doors—the doors torn off the hinges, and I saw the whole thing, saw it all.

Q. Where was Leader? Was Leader there when the doors were thrown off?

A. No.

Q. Leader wasn't there?

A. Leader was down—had gone down to the lower end of the building, down on Fifth Street. He was nowhere near when this—when they rushed the doors and pushed the officers aside and tore off the doors.

Q. And did you see anything happen after that?

A. I saw thousands of people rushing into the building, that is all I saw, and then there was a rain, a rainstorm pending, and I was—

Q. You were there when the rainstorm was pending?

A. No, I left before the rain came.

Q. Oh, you left before the rainstorm?

A. Yes.

Q. You remember, though, there was a pretty good rain that day, wasn't there?

A. It rained heavily that day, yes.

MR. SYME:

That is all, Mr. Higgins. Cross examine.

Cross Examination

BY MR. HIRSCH:

Q. Now, Mr. Higgins, after you arrived at the scene where did you stand?

A. I was standing on the southwest corner of Fifth Street and whatever that cross street is, I don't know.

Q. Luzerne?

A. I never knew what the street was.

Q. Opposite the main entrance of the plant?

A. Right opposite the main entrance is where I stood.

Q. Well, you were there in the beginning, because you just said you crossed to the west side. In the beginning you were on the east side?

A. No, I was on the west side first. I crossed over to the east side when I was introduced to Mr. Leader.

Q. Oh, that is what I mean. You started on the west side, which is across the street from the mill?

A. Yes.

Q. And crossed over to the east side, which would put you right in front of the entrance to the mill?

A. Well, a little south of it, not right in front of it; little south of it.

Q. Now, at the time—and check me if I am incorrect, I am trying to recall what you said—at the time you were on the east side of the street next to the corner of the mill there or near the corner of the mill you saw this huge crowd of people, as you said, thousands, come from every direction?

A. They were accumulating from all—coming from all sections.

Q. And when you saw Leader the crowd had already accumulated in large numbers?

A. Oh, yes, there were thousands of people there then.

Q. And likewise you testified that while you were on the east side bricks were being thrown from the west side against the building?

A. Well, I guess—I couldn't tell you whether they were being thrown when I was on the east or the west side. Bricks were being thrown and some windows were broken, there is no doubt about that.

Q. But it was the bricks that were being thrown which made you cross from the east side to the west side?

A. No, I wouldn't say so.

Q. Well, what would you say?

A. Well, the crowd was—was milling around

and there was trouble with the police there and it looked to me as if there was going to be violence, and I just thought I better get out of it as far as I—protect myself. Besides, Mr. Leader had gone and I had no—no reason to stay there.

Q. Now, how big a crowd was there there when you were talking to Mr. Leader?

A. Oh, there were thousands—I couldn't estimate, but the whole streets were filled. All the streets were filled with people.

Q. And at that time the traffic was pretty well blocked up?

A. Yes.

Q. And had the police begun to disperse the traffic before, during or after the talk with Leader?

A. The only thing—the police couldn't do anything with the crowd. They did try to arrest for the brick throwing, at least, that is what I thought, they were trying to get the fellows that were throwing the bricks.

Q. Well, you said the motor cycle police came?

A. They did, they tried to ride the crowd down.

Q. You were then on the east side?

A. I was on the west side then.

Q. Yes.

A. On the west side.

Q. And while you were on the east side and while you were talking to Leader there were thousands of people filling around?

A. Yes, sir.

Q. And under those conditions you had a leisurely conversation with Mr. Leader, lasting fifteen or twenty minutes, is that correct?

A. Yes, sir.

Q. You got there at one-thirty and you said there were two or three hundred people. When this huge crowd of persons began coming from every direction that was approximately two-thirty, was it not?

A. Around that time. I didn't keep any tabs on the time, exactly. I am just using my best recollection.

Q. Well, would you say about an hour after you got there?

A. About an hour, hour and a half.

Q. And they came down Fifth Street and from every direction, did they not?

A. Every direction, yes.

Q. There are hosiery mills around there, aren't there?

A. I don't know, really.

Q. Oh, you don't know that neighborhood there?

A. I don't know. I don't know the neighborhood.

Q. Do you know that the Courtland mill is several blocks north on Fifth Street?

A. I don't know. I don't know that neighborhood at all, sir.

BY MR. SYME:

Q. Where do you live?

MR. SYME:

Oh, I am sorry. I thought you were through.
I am very sorry.

BY MR. HIRSCH:

Q. Now, how was it, Mr. Higgins, that with that huge crowd of persons so thickly gathered around the corner of the building you were able to state,

if I understood you correctly, that Leader left you and went to the south end of the building? You couldn't see where he went, could you?

A. Well, I could see him going down the street, yes, I could see him going.

Q. Well, wasn't that after this police infuriation had begun and the crowd became unruly and there was a huge crowd in the street, as you say?

A. Well, there was crowds there, of course, but you know, you know even the strikers were parading then, you know, they had banners and were parading around the building, and it was possible for a man to walk down, it wasn't so densely crowded that he couldn't walk down the sidewalk.

Q. And you saw bricks being thrown up against the windows of the mill, did you not?

A. A few, yes, not many.

Q. You saw windows being broken?

A. A few, yes, down at the lower end of the mill.

Q. Didn't you see but a few windows broken?

A. Not so many.

Q. At whom were the bricks being thrown, at the building or at the pickets?

A. I don't know; at the building, I suppose, because they went up fairly high.

Q. So as a result of the police arriving on the scene where there were thousands of people you would have us understand that the crowd began throwing bricks against the building in protest or because they were infuriated at the police, and then rushed the building and thousands rushed through and destroyed the place because the police infuriated them, is that right?

A. I wouldn't have you believe anything, sir. I am simply telling you what I saw.

Q. Well, is that your understanding of what happened?

A. Not exactly, no.

Q. Well, you said the police infuriated the crowd and then they subsequently broke into the building, didn't you?

A. That was my opinion, that that is what really caused the outbreak.

Q. Then I am asking you, it is therefore your opinion that because the police infuriated the crowd outside that they decided to first throw bricks against the building and then rushed the front door, sweep into the place, as you said, in thousands of numbers, lay the place waste, and in that way express their indignation at the police? Is that your understanding or is that your opinion as to what happened?

A. No, that is yours. That isn't mine.

Q. Well, then, what is your opinion? What connection are you making between infuriation of the crowd and the fact they broke into the building and laid it waste and put two hundred sit-downers in there?

A. I am not making any conclusions at all, sir.

Q. But you did make a conclusion,—

A. I gave you—

Q. —that the police infuriated the crowd?

A. I gave you my opinion, that is all, for what it is worth. If you don't want it you don't have to accept it.

Q. I didn't ask for your opinion.

A. Well, I don't—

Q. I am asking whether it was your opinion that the crowd broke into the building because they became infuriated from the police?

A. I don't know. I am unable to say.

Q. Now, if I understand your testimony, if I recall it correctly, you said that the crowd was peaceful until the mounted police came, and that infuriated them, and then the motor cycle police came and that infuriated them, is that correct?

A. That is correct, yes.

Q. And then you said the brick throwing began, is that correct, chronologically?

A. Impossible for me to say just when the brick throwing began. It happened intermittently. It wasn't any concerted barrage of bricks, it just —every once in a while somebody would throw a brick.

Q. Was there brick throwing after the mounted police had infuriated the crowd and after the motor cycle police had infuriated the crowd?

A. Yes, sir.

Q. And I am correct in my recollection when I say that you testified that the brick throwing began and you were talking to Leader quietly when this commenced, which in chronological order of events would be after the crowd was infuriated by the police; you were standing there talking quietly to Mr. Leader?

A. Yes.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. Just one question; where do you live, Mr. Higgins?

A. I live in Mt. Airy.

Q. You live in Mt. Airy.

MR. SYME:

Does Your Honor want to go on now, put another witness on?

THE COURT:

Yes, surely, go right ahead.

MR. SYME:

Mr. Etter.

WILLIAM F. ETTER, sworn.

MR. HIRSCH:

Is Mr. Higgins still here?

MR. HIGGINS:

Yes.

MR. HIRSCH:

May I recall Mr. Higgins for one further question which I meant to ask?

THE COURT:

All right. Where is Mr. Higgins?

MYLES HIGGINS, recalled.

Recross Examination

BY MR. HIRSCH:

Q. I believe you said that after the crowd became unruly and the police had endeavored to make arrests of several people who were throwing bricks, Leader then went up to the door to talk to the management about doing something toward quieting the crowd, is that correct?

A. Yes.

Q. And as far as you knew that was his purpose for going up to the door?

A. I couldn't hear, overhear the conversation at all except what he said—

Q. What he said to you?

A. Yes.

Q. So as far as you know, when he went up to the door of the plant it was to talk to the management about quieting the crowd outside?

A. Yes.

MR. HIRSCH:

That is all.

WILLIAM F. ETTER was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Etter, you are an employee of the Apex Hosiery Company, is that right?

A. That is right.

Q. How many years have you been working at the Apex Hosiery Company?

A. Close to seven years.

Q. Close to seven years. You are a member of Branch 1 of the American Federation of Hosiery Workers?

A. That is right.

Q. And you joined the union when?

A. Some time approximately a week or maybe a little more to May 6th.

Q. What is your job in the mill?

A. I run a half job on a legger.

Q. On May 6th, 1937 or immediately prior thereto you were a helper, is that right?

A. That is right.

Q. Were you present at the meeting of the Apex Hosiery Workers on May 5th, 1937?

A. I was.

Q. You were, and was Mr. Leader present at that meeting?

A. He was.

Q. As a matter of fact, the group was addressed by Mr. Leader, is that right?

A. That is correct.

Q. About how many people would you say were at that meeting?

A. I don't know exactly; approximately one hundred to one hundred and fifty.

Q. You would say approximately from one hundred—

A. To one hundred and fifty.

Q. The hall was filled?

A. Right.

Q. Full. Was this in a hall or was it outside?

A. No, it was in—above a cafe and restaurant at Fifth and Butler, on the second floor.

MR. HIRSCH:

I am sorry, I thought Leader said it was outside:

MR. SYME:

He said it was at Fifth and Butler, but that wasn't outside.

MR. HIRSCH:

All right.

MR. SYME:

It was in a hall.

• BY MR. SYME:

Q. And there were Apex workers there, is that right?

A. That is right.

Q. As far as you knew did all of them sign application blanks?

A. Every one.

Q. Every one had signed an application blank. Does the signing of an application blank of the hosiery workers union make you a member?

A. No.

Q. What else do you have to do in order to be a member of the hosiery workers union?

A. The main thing to become a member, you must take the oath.

Q. You must take the oath. And, therefore, the mere signing of the application blank would not place you as a member of the union, would it?

A. In the files, no.

Q. Now, at that meeting the Apex hosiery workers spoke to Leader as the representative of the union, is that right?

A. That is right.

Q. When I say the union, I mean Branch 1 of the American Federation of Hosiery Workers. Do you remember what grievances were presented to Leader at the time?

MR. HIRSCH:

Objected to.

MR. SYME:

I will withdraw that question.

BY MR. SYME:

Q. Mr. Etter, what did you ask Mr. Leader to do?

MR. HIRSCH:

Objected to, by way of conversation.

MR. SYME:

Oh, not by way of conversation—

BY MR. SYME:

Q. What, when I say "you", I mean what did the workers—

THE COURT:

Go ahead.

BY MR. SYME:

Q. —what did the Apex hosiery workers ask Mr. Leader as the representative of the union to do,—

THE COURT:

I will allow it.

MR. HIRSCH:

All right.

BY MR. SYME:

Q. —Mr. Etter.

A. Well, they—the first thing they asked him is what their rights were under the Wagner Labor Act. They wanted to know whether they could have a union in the mill and have a voice, that they can discuss their grievances.

Q. What did they want to discuss their grievances for?

A. Well, there was helpers making small salaries and knitters making large salaries and we were doing all the work.

Q. What were you making?

A. Fifteen dollars a week.

MR. HIRSCH:

Now, I asked that of Mr. Leader, what these people were making, and it was objected to.

MR. SYME:

All right, you will be able to cross examine him—

MR. HIRSCH:

All right.

MR. SYME:

--if you want to.

THE COURT:

It is entirely unimportant to this issue.

MR. SYME:

All right, I am not going into this, Your Honor.

BY MR. SYME:

Q. As a result—or, rather, this meeting was concluded by what time?

A. Somewhere around midnight.

Q. Somewhere around midnight, and what instructions did you give to Mr. Leader, if any, or what decision did you adopt?

A. Well, the Apex workers talked it over and they decided that we would go in to work at two-thirty the following day and Mr. Leader would come into the office from the outside.

Q. Yes.

A. And he would ask for the committee to be sent for and brought to the office, and that was the —what was decided upon then, then if management wouldn't talk in any way, that we would strike.

Q. When you say you would strike, was there any mention of a sit-down strike?

A. No mention.

Q. Did Mr. Leader say to you that he would call a sit-down strike?

A. No.

Q. What time were you supposed to go into work on May 6th?

A. Two-thirty.

Q. Two-thirty. Mr. Etter, where do you live?

A. At that—at the present time I live—

Q. No, no, not where you live at present, that is immaterial. Where did you live on May 6th, 1937?

A. 3729 North Fifth Street.

Q. 3729 North Fifth Street, and how far is that from the Apex Hosiery Mill?

A. Approximately two to three squares.

Q. Approximately two to three squares. On May 6th, 1937 you were near the Apex Hosiery Mill, is that right?

A. That is right.

Q. And about what time did you get to the Apex Hosiery Mill on May 6th?

A. Somewhere around 1:30.

Q. Somewhere around 1:30. Had you heard by that time that the mill was closed?

A. I did.

Q. When did you first—well, when you came there at 1:30—strike that first part—when you came there at 1:30 was there a crowd around the plant?

A. There was people around the plant.

Q. About how many, would you say?

A. Well, a couple of hundred people.

Q. Couple of hundred people. Was Mr. Leader there at that time?

A. No.

Q. When according to your recollection did Mr. Leader arrive there?

A. At the designated time of about two, 2:15.

Q. About two o'clock, and did he—did you see him at that time?

A. I did.

Q. And then what happened?

A. I went over and talked to him.

Q. And what did he say to you and what did you say to him?

MR. HIRSCH:

Objected to.

THE COURT:

I will receive it.

BY MR. SYME:

Q. Go ahead, Mr. Etter.

A. Well, I told him what had happened, that the plant had been shut down, that nobody was allowed in, the workers couldn't go to work, and the conversation went on and he asked me where was the committee, and I went and rounded up the committee and brought them back, and went to the office door, knocked on the door, and asked for Mr. Meyer or Mr. Struve, and some—

Q. Were you also with Mr. Leader when he went to the door of the Apex Hosiery Mill the first time?

A. I was right alongside of him.

Q. Right alongside of him, and what happened?

A. He knocked on the door and somebody pulled the shade over and ask him what he wanted. He said, "This is William Leader. I would like to see Mr. Struve or Mr. Meyer with the Apex committee".

Q. And the doorman answered the door, is that right?

A. That is right.

Q. And what did he say?

A. He went back to the—or, he went away and come back and said, "Mr. Meyer or Struve won't see you".

Q. And then what happened?

A. He knocked on the door again, and the same thing happened, and Inspector LaRue and the other policemen were standing there and asked what the matter was.

Q. Yes.

A. And spoke to Mr. Leader. Mr. Leader says, "Would you see if you can make an arrangement of some kind by going in and seeing Mr. Meyer?", so he come out and said he couldn't do nothing, and we left the steps.

Q. And then what did you do?

A. We picketed. ~~The~~ strike—

Q. No, don't say "we"; what did you do?

A. Well, I picketed around the mill.

Q. Picketed around the mill, and how many people—well, prior to that did Leader say anything?

A. He said there was a strike officially declared. He knocked on the door and told the door man, whoever it was, that the strike was officially declared.

Q. And did he say anything to the committee that was with him?

A. No, not at the time.

Q. Did he say anything to you at the time?

A. Not at that time, he didn't.

Q. All right, and you went downstairs, is that right?

- A. We went off the steps.
- Q. You went off the steps?
- A. To the pavement.
- Q. And you formed the picket line?
- A. Yes.
- Q. About how many people would you say were in that picket line?
- A. There was only a few at first, but it grew in greater numbers as we went on.
- Q. About how many?
- A. Couple hundred people, at least.
- Q. Couple hundred people, and where was Mr. Leader then?
- A. I couldn't tell you.
- Q. Mr. Leader wasn't with you?
- A. No.
- Q. He left you?
- A. That is right.
- Q. About what time did Mr. Leader come back?
- A. Come back where?
- Q. To the mill, if he came back.
- A. I couldn't tell you what time he came back.
- Q. All right. Were you at this conference on May 6th, 1937?
- A. In Mr. Meyer's office?
- Q. That is right.
- A. Yes.
- Q. How did you get there?
- A. Somebody came out from the plant and said that Mr. Leader wants William Etter.
- Q. And where were you at the time?
- A. Across the street.
- Q. You were across the street. Why did you leave the picket line to go across the street?

A. Well, there was stones being thrown from in and out of the mill, hitting the building and windows. I wasn't going to get hit on the head with them.

Q. When you say stones being thrown from in and out what do you mean?

A. There were stones thrown to the building and there were stones coming out of the building.

Q. So that the people on the inside were throwing stones, too?

A. That is right.

Q. Did you see people being hit on the outside?

A. That is right.

Q. So that you were across the street. Were you on the street across the street or were you in some—where were you?

A. Well, when I first left the picket line I went—I went directly across the street at the south end of the mill. I was standing in front of the restaurant where I always ate my lunch.

Q. Yes.

A. And from there I went up to the corner, and that is when somebody come out and wanted—told me that Leader wanted to see me.

Q. Do you remember about what time that was?

A. I couldn't recall what time it was.

Q. And so you went into the office, is that right?

A. That is right.

Q. And whom did you find in the office?

A. I saw Mr. Leader standing there and I went up to him and asked him what he wanted.

Q. Was Mr. Meyer there?

A. I didn't see Mr. Meyer.

Q. You didn't see Mr. Meyer?

- A. At that time.
- Q. And Mr. Leader told you what he wanted?
- A. Yes.
- Q. What did he say to you?
- A. He says, "Where is your committee at", that Mr. Meyer wants us to come in his office and talk things over.
- Q. And what did you do?
- A. I went out and scouted up the committee and told people that I had seen, that I had known, if they saw so-and-so and so-and-so.
- Q. And you got this committee—or, did you get all of the committee or did you just get a part of it?
- A. I only received two of them.
- Q. You could just find two members of the committee?
- A. That is right.
- Q. Who were they?
- A. Russell Hammerl and Howard Hammerl.
- Q. Russell Hammerl and Howard Hammerl?
- A. That is right.
- Q. All right, and you and the two Hammerls went into the mill, is that right?
- A. That is correct.
- Q. Did you go into the office?
- A. Yes.
- Q. And who was in the office at that time?
- A. Well, there was Mr. Meyer, Mr. Leader, Mr. Burge, I think, I am not quite sure, I think he was there, and the two Hammerls and myself, that I recall.
- Q. You had been working at the Apex Hosiery Mill for about five years by that time, is that right?
- A. That is right.

Q. Did you know Mr. Meyer?

A. Only by face.

Q. Had you ever met him?

A. Never.

Q. And what happened?

A. Well, we were in there, and Mr. Meyer was quite excited and upset, and I imagine his mind was running away with him, he really didn't know what he was saying at some time or other, maybe—

Q. Were you introduced to Mr. Meyer then?

A. No, I wasn't.

Q. Did you talk to him, shake hands with him?

A. Not just then, I didn't.

Q. All right, go ahead.

A. And there was some conversation going on. I didn't receive all the conversation, I was in a fog myself half the time, but I recall where some story of cots come up, and I remember Mr. Meyer saying, "They might as well be comfortable as sleep on tables and floors and what not."

Q. All right.

A. And then is when you come in, Mr. Syme, and Mr. Leader said to Mr. Meyer if he would mind—if he wouldn't mind repeating what he said to the effect of an agreement, of negotiations in the morning at eleven o'clock in front of an attorney, and he did so.

Q. And then what happened?

A. Well, then I says to Mr. Meyer, "Well, this is the first opportunity that I ever had to come into the office and meet you", and I shook hands with him.

Q. Were you with Mr. Leader in the wareroom?

A. I was.

Q. Did you hear Mr. Leader addressing the employees in the wareroom?

A. I did.

Q. Do you remember what he said to them?

A. He said that—I don't remember exactly the words, but it was on the story that they should be peaceful and straighten up and clean up, that there was cots and food being sent in to them or going to be sent in to them, or something on that order, and that they should be peaceful and—well; be under certain disciplines, under their own.

Q. And then Mr. Leader left?

A. That is right.

Q. And you stayed in the plant?

A. That is right.

Q. You were the chairman of the sit-downers, is that right?

A. That is right.

Q. Did Mr. Leader ask you or any of the other employees in the plant to stay in the plant?

A. Nobody had asked me to.

Q. Did Mr. Leader ask any of the employees when he addressed them on the table? Did he say to them, "You stay in the plant"?

A. No.

Q. Do you remember the rain?

A. I do.

Q. Do you remember what happened to the crowd after the rain?

A. There was none.

Q. There wasn't? Now, you have heard witnesses testify to the fact that the locks were changed on the doors?

A. I heard that.

Q. Did the sit-downers change those locks?

A. Yes.

Q. Why?

A. Well, it happened on May 7th, there was a lot of commotion amongst the fellows and I went over to see what was the matter, and the only thing I could gather, that there was quite a few—a group of thugs being hired from the Middle West to come in and beat us up and throw us out, by management.

MR. HIRSCH:

That is objected to,—

A. (Continued) So we weren't taking any chances—

MR. HIRSCH:

—and I ask that that be stricken out. That is a statement which is purely this man's vision on the subject and unless he can support it by some direct and concrete and substantial evidence I ask that it be stricken out.

MR. SYME:

All right, you will be able to make the motion to strike out in the event it is not substantiated.

MR. HIRSCH:

I ask that it be stricken out.

THE COURT:

I ask counsel whether there is anything going to be produced to support that statement.

MR. SYME:

I don't know, Your Honor.

THE COURT:

Well, I will strike it out.

MR. HIRSCH:

Of course.

BY MR. SYME:

Q. Mr. Etter, did you have any trouble with the locks after that?

A. Very much.

Q. What happened?

A. We found in the gate in the yard, approximately five and a half, six feet tall, there is a fence and a gate, and many occasions we found it broken.

Q. Found the gate broken or the lock broken?

A. Lock broken and the gate opened.

Q. And the gate opened?

A. That is right.

Q. And what did you do?

A. Well, we kept putting on a new lock.

Q. Kept putting on a new lock. Mr. Etter, immediately after Mr. Leader left and the crowd dispersed on May 6th what did you do?

A. I got the committee together and decided that—well, the place must be cleaned and it must be kept clean, that there must be laws, because everything that is done is done by some laws or other, so we went together and we tried to form up a system, a routine that things should be followed by.

Q. Did you organize yourself into committees?

A. That is right.

Q. Did you sweep up the place?

A. We did.

Q. Now, these committees, did these committees continue until you left the plant?

A. They continued from the first to the last, there was always new committees added at all times, every little thing we run across.

Q. Name some of the committees that you had in the plant.

A. Well, there was kitchen patrol, there was a blanket committee, there was a sweepers' committee, there was a lavatory committee, night patrol.

Q. What was the purpose of the night patrol?

A. Well, that was acquired later on. That was—

Q. You mean after the June 10th incident?

A. That is right.

Q. What was the purpose of the sweepers' committee?

A. To keep the floors clean and the place healthy.

Q. What was the purpose of the lavatory committee?

A. To keep the place healthy, keep it clean.

Q. What other committees did you have?

A. There was an m. p. committee.

Q. A what?

A. Military patrol. There was a door committee.

Q. That is enough.

A. That is all I recall at the time.

Q. Were the janitors admitted into the plant?

A. At all times.

Q. At all times. You have heard testimony to the fact that the sit-downers followed the janitors around with clubs and with other—

MR. HIRSCH:

They were watchmen.

BY MR. SYME:

Q. Or watchmen—missiles. Was that true prior to June 10th?

A. It was never true that they followed them with clubs, and so forth, and what not, but they were followed after June 10th.

Q. They were not followed at all until June 10th, were they?

A. No.

Q. Where were the sit-downers?

A. Well, they—

Q. On what floors of the plant?

A. They were confined to the first and second floor. Second floor was their leisure place, more or less, there was a section, what we call the wing in the mill, that there was no—nothing at all, just an empty place, well, that is where they played darts; played pinochle, anything they felt like doing on that line.

Q. There were no machines there, were there?

A. No machines.

Q. No other equipment there?

A. Not at that particular point, no.

Q. All right. Did they go to the third, fourth, fifth or sixth floor?

A. They did not.

Q. Now, you have heard testimony to the fact that on June 10th certain machines were broken. Is that right?

A. That is right.

Q. What do you know about that?

A. Well, all I recall, I was somewhere within the mill on the morning of June 10th.

Q. Yes.

A. I think it was that time, I am not sure of

the date, only through the court records and what was brought in here.

Q. Yes.

A. And somebody said that there was machines on the fourth floor broke.

Q. Yes.

A. Well, I went up to look at them.

Q. Yes.

A. And I saw them broke.

Q. Yes.

A. The first thing was done, everybody was called to the second floor at their leisure quarters where meeting was held and there was plenty of room.

Q. You presided at that meeting? You were the chairman of that meeting?

A. That is right.

Q. And what happened?

A. Well, I told them what had happened, and that something was going to be done about it. We wanted to know who did it.

Q. Yes.

A. And there was word sent to the door committee that they don't leave until we—until word come that they could leave.

Q. Yes.

A. So the door committee locked the door and came up themselves, and we were discussing what—who might have done it or how it might have happened. Well, that was only a routine amongst the fellows, so we decided upon taking everybody's fingerprints in our own way.

Q. Yes.

A. And their names, that was in at the plant

from the night—the day before until the time we had discovered it.

Q. Yes.

A. And every sit-downer's fingerprints was taken.

Q. Yes.

A. "And all the maintenance fingerprints were taken.

Q. Did you call anybody from the Police Department at the time?

A. I didn't, no.

Q. Did anybody from the Police Department come?

A. Sergeant O'Doyle.

Q. Captain Doyle?

A. Well, Captain Doyle.

Q. Did he come with anybody else?

A. Another detective and a secretary.

Q. And did Captain Doyle and the other members of the Police Department come at your request?

A. Not at my request.

Q. Did you ask somebody to call them?

A. I went out to notify somebody on the outside to get in touch with one of the officials of the union to get somebody.

Q. To get somebody from the Police Department?

A. That is right.

Q. And did you ask the police—what did you ask the Police Department to do?

A. Well, I was talking to Captain Doyle for about an hour and a half and I showed him an instrument we had picked up on the fourth floor we thought might have done the damage.

Q. Yes.

A. And we said we would like to have things fingerprinted, and he called a fingerprint expert.

Q. Yes.

A. Well, the fingerprint expert come in and put powder on everything imaginable.

Q. Yes.

A. He said that he couldn't take fingerprints on account of the oil pressure or anything on that line. He fingerprinted everything that was any way of getting prints, and he couldn't do nothing with it.

Q. Did you tell him that you wanted them to arrest the people who were guilty of this?

A. That is right.

Q. Now, you have heard Mr. Harper testify to the fact that after you fingerprinted him he said—or, rather, you said, Mr. Harper testified to the fact that you said, "Jesus Christ, I forgot to wipe that off!" Is that true?

A. It's a lie!

Q. Now, then, you have heard testimony with respect to the destruction of machines on June 23rd, is that right?

A. Testimony, yes.

Q. Yes, you have heard Mr. Harper testify to the fact that you herded him and others into the back yard?

A. That isn't true, either.

Q. Is that true?

A. It is not.

Q. Did you herd Mr. Harper into the back yard?

A. No.

Q. After June 10th did you follow the watchmen?

A. Yes, we did.

Q. Why?

A. We had suspicions that they were—they might have been the ones that caused the damage.

Q. What kind of machines were they that were damaged?

A. Well, they were mostly older machines on the fourth floor.

Q. They were older machines on the fourth floor?

A. That is right.

Q. What did you do after—did you find out about the destruction of the machines on June 23rd?

A. Approximately, somewhere around early morning, three or four o'clock, I was awakened from sleep and was told that there was machines damaged upstairs on the third floor.

Q. So that that wasn't done—or, strike that. You heard, you heard Mr. Harper testify to the fact that about nine o'clock in the morning he was taken out into the back yard and then there was a lot of noise from nine to six?

A. That is right, that is what he said.

Q. Now, then, is that so?

A. It is not.

Q. Well, then, now, you tell us what happened with respect to the destruction of this machinery, you said about three or four o'clock in the morning before.

A. Well, I was awakened from sleep and was told there was machines damaged on the third floor, so I went to the third floor and I saw them, and went on above floors and I saw there was machines damaged here and there.

Q. Yes.

A. There was nothing I could do, they were done,

I couldn't start magic and they were all right again, so I came downstairs.

Q. Did you have anything to do with the destruction of that machinery?

A. Nothing at all.

Q. As far as you know, did any of the sit-downers have anything to do with the destruction—

MR. HIRSCH:

Objected to.

BY MR. SYME:

Q. —of that machinery?

MR. HIRSCH:

Objected to unless he can testify that he watched the movements of two hundred sit-downers all night and all day.

MR. SYME:

Objected to unless you can watch the movements of two million Philadelphians all day and all night!

THE COURT:

Well, gentlemen,—

MR. SYME:

With respect to these people, he is the head of the sit-downers, Your Honor.

THE COURT:

Gentlemen,—

MR. SYME:

He is one of the defendants here.

THE COURT:

Well, now, gentlemen, I didn't call for any argument here.

MR. SYME:

Oh, I am sorry.

THE COURT:

Don't take occasion to make a speech, either of you.

MR. HIRSCH:

I object.

THE COURT:

I am entirely ready to rule. The question is proper and the objection is overruled.

MR. HIRSCH:

What was the question and answer?

BY THE COURT:

Q. So far as you know did any of the sit-downers commit this damage? is the question.

A. No, I do not.

THE COURT:

Now, Mr. Hirsch can examine as to your opportunities to know what they were doing.

BY MR. SYME:

Q. Did you participate in any way in the destruction of this machinery?

A. I did not.

Q. Did you order or ask anybody to destroy any of this machinery?

A. No, I did not. I was protecting it, not trying to destructure it.

Q. You were protecting it, not trying to destroy it. You left the plant when the others left, is that right?

A. I was the last one to leave.

Q. You from time to time went through the building, isn't that right, Mr. Etter?

A. Almost every day.

Q. Almost every day. You have heard Mr. Harper's testimony with respect to the destruction of certain property. Let me recapitulate. On May 6th you are supposed to have broken into the basement.

A. Couldn't break into the basement. There was no door to break into.

Q. You couldn't break into the basement because there was no door to break into?

A. That is right.

Q. The switchboard is supposed to have been torn out by you, by you and the other sit-downers.

A. When I come into the office to meet Mr. Leader the switchboard was on the floor.

Q. So that the sit-downers had nothing to do with that?

A. That is right.

Q. How about those benches in the yard that were destroyed?

A. Benches in the yard? I don't know of any.

Q. You don't know that there are any benches in the yard, is that it?

A. That is right.

Q. On May 27th you are supposed to have broken the door to the roof. Do you know anything about that?

A. I do not.

Q. Do you know whether any of the sit-downers broke any door to any roof?

A. To my knowledge they did not.

Q. Do you know whether there was a door to the roof broken?

A. I don't know.

Q. Did Mr. Harper ever complain to you about the destruction of any property?

A. Well, he said there was a window broke in the yard from playing ball.

Q. There was a window broken in the yard from playing ball?

A. That is right.

Q. Do you admit the breaking of that window from playing ball?

A. That is right, I do. It was an accident.

Q. Do you know anything about a half hose cabinet broken and then re-locked by you?

A. No, I don't.

Q. Or re-locked by Mr. Harper?

A. No, I don't.

Q. You don't know anything about that. Was that ever brought to your attention by either Mr. Harper or anybody else on behalf of the company?

A. Not that I recall.

Q. Mr. Harper testified that on May 29th the counters were broken on the examining tables on the second floor.

A. I don't know anything about it.

Q. You don't know anything about that?

A. I do not.

Q. Did you ever see those counters?

A. Don't even know what he is referring to.

Q. You don't know what he is referring to. On June 7th stockings were pushed off the machines, according to Mr. Harper—or, pressed off the machines, I am sorry.

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A. I don't know anything about stockings being cracked off at any time.

Q. On May 26th the gate to the inner yard was broken. Did you have anything to do with the breaking of that?

A. Not that I know of.

Q. Well, did you have anything to do—

A. Myself?

Q. Wait, did you break a gate to the inner yard?

A. Not that I know of.

Q. As far as you know, did any of the sit-downers do it?

A. No, I don't.

Q. On June 8th Mr. Meyer's desk was opened, according to Mr. Harper, and the cigars were taken out. Do you smoke cigars?

A. No, I don't.

Q. Did you take any cigars out of Mr. Meyer's desk?

A. No, I did not.

Q. As far as you know did any of the sit-downers take any cigars out of Mr. Meyer's desk?

A. Not that I know of.

Q. As far as you know did they break the desk open?

A. No.

Q. Did you break it open?

A. No, the desk wasn't broke open as far as my knowledge.

THE COURT:

I think we will recess for lunch until two o'clock.

(Recess, 12:30 until 2 o'clock P. M.)

After Recess

Present: Counsel as before noted.

Defendants' Evidence (Continued)

WILLIAM F. ETTER, recalled.

THE COURT:

Very well, gentlemen.

Direct Examination (Continued)

BY MR. SYME:

Q. After you left the plant were you present at any conferences that were held for the purpose of settling the strike?

A. I was.

Q. Now, after the settlement of the strike did you try to enroll members in Branch 1?

A. You mean—

Q. Did you try to get people to join the union, Apex workers?

A. Yes, we did.

Q. Did you experience any difficulty?

A. At some times.

Q. What difficulty did you experience?

MR. HIRSCH:

Objected to. This is subsequent to the settlement.

THE COURT:

Well, it may have some relevancy.

MR. HIRSCH:

All right.

THE COURT:

I can't tell that.

MR. HIRSCH:

All right.

THE COURT:

I will hear it.

MR. HIRSCH:

All right.

A. Well, the people were scared to join up. They were afraid they would be fired, and so forth.

BY MR. SYME:

Q. Now, I ask you again, Mr. Etter, did you or did—did you at any time destroy any machines in the Apex Hosiery plant?

A. No, I did not. I was looking forward to getting one of those machines.

Q. When you say you were looking forward to getting one of those machines what do you mean?

A. Well, I expected to become a knitter and run one.

MR. SYME:

That is all; cross examine. Oh, just one more question.

BY MR. SYME:

Q. You are working at the Apex Hosiery plant today?

- A. That is right.
Q. And you are a member of the union?
A. That is right.

MR. SYME:

That is all.

Cross Examination

BY MR. HIRSCH:

Q. The sit-down strikers evacuated the premises on June 23, 1937, which was a Wednesday, did they not?

A. That is correct.

Q. And it was prior to that day that you were told, or awakened early in the morning and told about this new damage to machinery on the upper floors, and you found that damage?

A. I did.

Q. Did you send for fingerprint experts when you found the new damage on or about June 22nd, 1937?

A. It was in the morning of the day of the eviction that it was found. We sent for nobody at that time.

Q. As far as you know, the damage occurred during the preceding night?

A. That is correct.

Q. And that was after this Court pursuant to an opinion of the Circuit Court of Appeals, had entered an order commanding the sit-downers to evacuate the premises?

A. I think that is correct.

Q. Who was present at the mill when the sit-downers went out, insofar as the union officials were concerned? You said that Leader was present

when they went in, and Burge was present when they went in. Now, who was there when they went out?

A. Well, as I recall, the Mayor came in.

Q. Yes.

A. And with him was Mr. Syme, Mr. Leader, Mr. Rieve.

Q. Mr. Burge?

A. I think so. I am not quite sure, but I think he was.

Q. Mr. Brown?

A. Mr. Burge was with him; I don't recall Mr. Brown.

Q. Mr. Oehmig?

A. No.

Q. But you do recall that the president of your local was there,—

A. That is right.

Q. —Mr. Leader, that the vice-president of your local was there, Mr. Burge,—

A. That is right.

Q. —and that those same two officers were there when the sit-down strike began?

A. That is correct.

MR. SYME:

I think it should be made a matter of record, Your Honor, that Mr. Leader and Mr. Burge were both ordered by the Court to get the sit-downers out and that they would have been guilty of contempt of court if they had failed at least to make an effort to get the sit-downers out. I think that is important.

MR. HIRSCH:

Well, now, if we are going to go into that

phase of it, the Court entered an order against all of the defendants,—

MR. SYME:

That is true.

MR. HIRSCH:

—one of whom was Mr. Burge and one of whom was Mr. Leader.

MR. SYME:

That is right.

MR. HIRSCH:

But the Court did not tell those two to go up and get their union out. The Court told all the defendants to get out, including those two.

THE COURT:

Well, I don't think there is any occasion to do anything about it now.

BY MR. HIRSCH:

Q. How many sit-downers were on the premises from time to time, as far as you know?

A. Somewhere around two hundred and fifty.

Q. It was as a result of additional men being on the premises that after two hundred cots were brought in on May 6th an additional fifty cots were supplied by the union, isn't that a fact?

A. I don't recall that.

Q. Well, do you recall additional cots coming up?

A. No, I don't.

Q. Now, as to the machinery damage, you said that machinery damage did occur on June 10th or about that date?

A. That is right.

Q. And that was two footers on the third floor and twenty-eight leggers on the fourth, as far as you recollect?

A. Well, I didn't count the machines.

Q. But you—

A. I didn't see any on the third floor. It was on the fourth floor that I saw it.

Q. But you saw damage on the fourth floor?

A. That is right.

Q. And it was after that that you had the watchmen followed by sit-downers to see that they didn't do any damage to anything around the plant, is that correct?

A. That is right.

Q. And were they followed day and night in their rounds?

A. Every hour.

Q. Every hour?

A. That is right.

Q. And did that practice continue until the sit-downers evacuated the property?

A. It did.

Q. So they could not have destroyed one hundred and four machines on June 22nd; could they, because they were watched by the sit-downers,—

A. That is right.

Q. —is that correct? That eliminates them, doesn't it?

A. To an extent, yes.

Q. Now, you said that when you went to the plant on May 6th you had no idea there was going to be a sit-down strike?

A. I did not.

Q. And two hours later you were chairman of the sit-down committee?

A. Well, I was chairman—I was elected chairman of the strike the night before, chairman of the committee of the Apex Shop Association.

Q. Now, isn't it a fact that when you went in to Mr. Meyer's office with Mr. Leader and your small committee, and met Mr. Meyer, as you have testified, you told him three or four times, "From now on I am in command of this shop"?

A. No, I did not.

Q. You did not!

A. No.

Q. And isn't it a fact that when you went on to the property you knew there was going to be a sit-down strike and that you were to be chairman of the committee?

A. I did not.

Q. The doors were locked and there was a door committee appointed by the sit-downers to guard the gates or the doors to the plant, was there not?

A. After we went in.

Q. After you went in?

A. That is right.

Q. No one could go in and out those doors unless the door committee of the sit-downers approved it?

A. That is right.

Q. Or you approved it, is that correct?

A. That is correct.

Q. And when it came time to leave someone in whom the door committee didn't know, they went to you for final approval?

A. I think so.

Q. And as a matter of fact, the doors were also locked to prevent any of the sit-downers from getting out, and that was on orders of the union, so

that the plant could be held against the management?

A. No, it is not true.

Q. Why?

A. Because none of the sit-downers that had got out—

BY THE COURT:

Q. Well, Mr. Etter, let me ask you one question which is not clear in my mind. There was a sit-down strike in the plant?

A. That is correct.

Q. Now, when did it originate and who originated it? Somebody—somebody, somewhere along the line, started the idea of the sit-down strike. Now, what is your—what do you want us to understand as to how it originated? Who started it,—

A. Well,—

Q. —and when did it start,—

A. The only—

Q. —and what was said?

A. The only way that I can figure it out is that when I went into the office and things were straightened out in the office, that the fellows were in there and a sit-down strike was the most logical strike at that time, and there was nobody authorized a sit-down strike. The Exide had one, and so forth; I guess that was the most logical thing at the time and they just carried on with that, the fellows themselves.

BY MR. HIRSCH:

Q. As a matter of fact, the union of which you had become a member had signed agreements in a number of shops in Philadelphia preceding this at which sit-down strikes were first held before the

management would give in and sign a closed shop agreement, and you knew that, isn't that correct?

A. I wasn't in the—I was no official in the union,—

Q. No,—

A. —to sign agreements.

Q. —I appreciate that, but you knew all there was going on?

A. Maybe through papers.

Q. Yes, but you knew it?

A. To an extent, yes.

Q. Yes, and all the other fellows who attended that meeting that night at Fifth and Butler knew it, and it was discussed that night?

A. What was discussed?

Q. The question of a sit-down strike.

A. No, it wasn't.

Q. It wasn't discussed that night?

A. It wasn't.

Q. You signed pledge cards that night, didn't you?

A. Some may have.

Q. You were already in the union, you didn't have to sign, is that it?

A. Well, I was a member of the union.

Q. Yes.

A. I didn't—there was new members, when they come in they must—

Q. Did the new—

A. To join a union they all sign a card.

Q. Did the new members in that group sign pledge cards that night?

A. Well, I wouldn't say exactly. I imagine they did.

Q. Did you see them?

A. No.

Q. Didn't you say before that they all signed up that night?

A. I didn't say that they all signed up that night.

Q. Didn't you testify they all signed application blanks, and you were referring to this group that met at the Cafe at Fifth and Butler on the second floor?

A. I remember even after the strike signing application blanks.

Q. I didn't ask you that. Didn't you say that all of the group that met at Fifth and Butler signed application blanks?

A. I don't recall whether I mentioned—

MR. HIRSCH:

Mr. Rodebaugh, will you give me the first few questions, please, on that? It was right in the beginning of his testimony. Read it, please.

(The following testimony was repeated by the Reporter:

"Q. And there were Apex workers there, is that right?

"A. That is right."

"Q. As far as you knew did all of them sign application blanks?"

"A. Every one.")

BY MR. HIRSCH:

Q. So that you testified, in referring to your testimony about this meeting at Fifth and Butler, that all signed application blanks. Now, do you want to change that, or is that correct?

A. At some time or other they all signed application blanks, that is correct.

Q. But what I am asking you is, isn't it a fact that that night, when the meeting took place at Fifth and Butler, all of them present signed application—pledge cards?

A. I wouldn't say positively that I seen everyone sign a pledge card.

Q. Did you see some sign pledge cards?

A. There were some signed pledge cards, that is correct.

Q. Now, it is a fact, is it not, that you signed passes permitting people to leave—permitting sit-downers to leave the premises for one reason or another, from time to time during the strike?

A. That is correct.

Q. I show you some of them which have been offered in evidence as part of a larger exhibit marked Plaintiff's Exhibit 16.

(Papers were shown to the witness.)

BY MR. HIRSCH:

Q. They are stamped with your name, are they not?

A. That is right.

MR. SIMONS:

If Your Honor please, may we just note on the record that that is part of an exhibit that was offered generally in evidence without any proof or admission as to the fact or relevancy at that particular time.

MR. HIRSCH:

It was offered at that time, sir, as a group of papers found on the premises.

THE COURT:

It is obviously relevant. It is all right.

MR. SIMONS:

No, no, I am not referring to this particular thing, I am referring to the entire folder that was offered. It was offered at that time without it being admitted that the folder and particularly its contents were relevant, and it would be a matter of proving each particular item in the folder.

THE COURT:

Well, I—

MR. SIMONS:

I am raising it at this time so that the record will indicate that that is not part of the evidence or part of the relevant evidence.

THE COURT:

I don't get your point at all, Mr. Simons. Whatever it is, the present line of examination is proper.

MR. SIMONS:

No, I am not objecting to the present line of examination except for the record to show that at one time, some time previously, a folder had been offered in evidence without any discussion as to the relevancy of any of the material in the folder, so that it does not appear that everything in that folder was relevant to the issue, unless so proven, as he is doing at the present time.

THE COURT:

Well,—

MR. HIRSCH:

Well, I offered it generally as papers found on the premises immediately upon the management going in and taking repossession of the place.

THE COURT:

Well, it is all right. Go ahead. It can be noted as Mr. Simons wants.

BY MR. HIRSCH:

Q. Now, this card is dated June 5th, and says "Leave granted to Paul Lang to attend funeral left 2:30 p. m. June 5." Signed, Wm. Etter.

That was a card that permitted Paul Lang, a sit-downer, to leave the premises to attend a funeral; is that correct?

A. That is correct.

Q. And he had to come back to the premises when he was through, didn't he?

A. No.

Q. Did he ever come back?

A. He came back.

Q. Yes, but he couldn't get out unless you as the chairman of the sit-down committee permitted him to go out, by these papers?

A. No, there was—there had to be a routine.

Q. I am not questioning that. I am asking you about the routine. He couldn't have gotten out, in other words, the door committee wouldn't have permitted him to leave the premises unless he had a pass from you?

A. Well, that is correct.

Q. Here is another pass which says John Stack, Friday June 4, leave to be back Sunday evening

June 6. Signed, Wm. Etter; and that is a similar type pass?

A. That is on the same order. That—that was more not to get out, but to come back in, to be identified.

Q. You mean that anybody could leave the premises any time they wanted?

A. Everybody had their leave, and if they didn't want to come back they could stay away.

Q. Yes, but they had their leave at prescribed times to go home to their family from time to time for short intervals, isn't that correct?

A. Well, I wouldn't say it was short intervals. I would say it was fairly long intervals.

Q. But they had to get a card, as you said, before they could get out of the premises?

A. No, they didn't.

MR. HIRSCH:

Oh, read his testimony—

THE WITNESS:

In that special case, yes, but not—

BY MR. HIRSCH:

Q. Well, what was there special? Didn't this man have a good reason?

A. That is right.

Q. —to get out, to attend a funeral? Why did he need your permission, then, to get out of the plant to go to a funeral?

A. What time—that time was 2:30 in the afternoon?

Q. Left, it says he left 2:30 P. M., June 5.

A. Well, that wasn't the time that they all went

home. That was a time in between the regular routine of going home and coming back.

Q. So that there was a time somewhere in between the regular routine that they couldn't get out without your permission, is that right?

A. If they wanted to get out they could have went out on their own.

Q. Then why did he have to come to you and get a pass?

A. For identification, to get back.

Q. I see. He couldn't be identified by the door committee, could he, being one of a group that was in there for seven weeks?

A. The door committee wasn't the same man at all times.

Q. But it was the same group, practically speaking, for seven solid weeks, wasn't it? Didn't you know each other? Weren't you all fellow-employees?

A. That is right. We didn't know half, half of us didn't know the other half.

Q. Didn't you?

A. No.

Q. But you would have after living together for seven weeks and doing nothing but playing pinochle?

A. Well, we got to know each other, that is right.

Q. And you got to know each other to the extent that unless he had a card he couldn't get back in, is that what you want us to understand? Or isn't the reason as I say, he couldn't get out without a pass because sit-downers were not permitted to go out unless you as the chairman of the sit-down committee permitted it, and you were working

under orders from Mr. Leader, the president of the union?

A. I was working under orders from nobody.

Q. Was this sit-down your idea?

A. It wasn't my idea.

Q. Whose idea was it?

A. I don't know.

Q. But you were chairman!

A. That is right.

Q. Now, you said you got to the plant some time around 1:30 ready to go to work, is that correct?

A. That is correct.

Q. As a matter of fact, you got to the plant at 1:30 because the night before you had planned to be there with the group that had met at Fifth and Butler, together with about ten thousand other members of this rump committee, called from every hosiery mill in Philadelphia, and told to be there at 2:30, isn't that why you were there?

A. No.

Q. Was it a coincidence that people came out from every direction, as described by Mr. Higgins, at one time, and that it happened to be the time, 2:30, when seven mill owners have testified their employees asked them to leave and be down at the Apex for a demonstration?

A. I don't know why the people came.

Q. You don't?

A. I don't.

Q. And the committee that called upon Mr. Meyer that day was composed of Mr. Leader, the president of the union, you, as the chairman of the employees in the Apex plant; and ten to fifteen thousand other persons outside as "persuaders", isn't that a fact?

A. Repeat that question, please.

MR. HIRSCH:

Repeat it, Mr. Rodebaugh.

(The question was repeated by the Reporter, as follows:

"Q. And the committee that called upon Mr. Meyer that day was composed of Mr. Leader, the president of the union, you, as the chairman of the employees in the Apex plant, and ten to fifteen thousand other persons outside as 'persuaders', isn't that a fact?"

A. No, the committee that was supposed to meet Mr. Meyer was a committee to be in work and called down, Mr. Leader was going to the office and send up for us,—

Q. But at the same time—

A. —or call up for us.

Q. But at the same time your committee went up the steps to meet Mr. Meyer, by coincidence or otherwise there were ten to fifteen thousand other people outside who by their presence alone let Mr. Meyer know that the union's request for him to sign a closed shop agreement had better be met, isn't that a fact?

MR. SYME:

Your Honor, I haven't objected to a lot of these speeches—

MR. HIRSCH:

They aren't speeches, they are questions.

MR. SYME:

—and melodramatics, but this idea of ten to

fifteen thousand people, and "had better be met"—I mean, I don't see—they are long questions, they are cumbersome questions, and the witness has answered him two or three times in succession.

THE COURT:

Well, do you want to object?

MR. SYME:

Yes, I object.

THE COURT:

I will overrule the objection.

A. Well, I don't know anything about the people on the outside.

BY MR. HIRSCH:

Q. You saw them there, though, didn't you?

A. I saw people, that is right.

Q. And they were there at the same time that you and Mr. Leader and the rest of your committee went up the steps?

A. That is right. Some of them people were neighbors, that I knew.

Q. When did you first—well, there is no doubt that there were a few neighbors around, after the crowd gathered—when did you first see Mr. Leader that day, and where?

A. Somewhere around two o'clock he drove up Fifth Street and parked on Luzerne Street, and I walked over and talked to him.

Q. And then where did you and he go?

A. He asked me where the committee was. I told him what had happened. He asked me where the committee was.

Q. Yes.

A. And I told him, "I don't know, but I will scout them up".

Q. Where did he go, and how long were you away from him?

A. He waited at the car.

Q. How long?

A. Oh, ten, fifteen, twenty minutes.

Q. How far was his car from the Fifth and Lu-zerne Street entrance?

A. Approximately halfway around on Luzerne Street from Fifth to the end of the mill.

Q. All right, so when you saw him he was at his car, and he waited there while you rounded up the committee, and you went back and found him at the car. Then where did you go with him?

A. We went up on the stairs, or the steps, to the office door.

Q. And you were with him from the time he left his car and went up to the steps?

A. Yes.

Q. Then what happened?

A. Then he knocked on the door and asked to see Mr. Meyer and Mr. Struve.

Q. Yes.

A. And then they wouldn't see him, and he asked again, and he was talking to Inspector LaRue, and he went in and came out.

Q. You were there with him all this time?

A. All that time.

Q. That was on the steps?

A. On the steps.

Q. Go ahead, then what happened?

A. Then he knocked on the door again. Who-ever the doorman was, he told him, being as Mr.

Meyer wouldn't meet with him, that a strike was officially declared.

Q. And then where did you and he go?

A. Well, Mr. Leader said our right is to picket if we want to, he didn't say we had to picket, or we are not allowed to picket, if we want to picket it is our privilege. We started to picket. I don't know where Mr. Leader went to.

Q. What time would you place that? What time was that, how long before the stones started to fly, would you say?

A. Ten minutes, fifteen minutes.

Q. Now, when he said you had the right to picket, that was ten to fifteen minutes before the stones started to fly, is that correct?

A. We had picketed for ten or fifteen minutes.

Q. Yes. Now, had the police by this time arrived and begun the dispersement of that crowd through mounted or motor cycle police, or otherwise?

A. Well, there was plenty of police around.

Q. Was the crowd being dispersed at that time?

A. There was motor cycles driving through people. I didn't see any mounted police.

Q. There were no mounted police there that day, were there?

A. I don't know.

Q. You didn't see any?

A. —there might have been. I didn't see any.

Q. You didn't see any. You were outside?

A. That is right.

Q. Now, when the missiles began to fly it was ten minutes after Mr. Leader—ten to fifteen minutes after Mr. Leader was refused admission at the gate. Where was Mr. Leader then, do you know?

A. I couldn't tell you.

Q. Do you know where he went?

A. No, I don't.

Q. From the time that Mr. Leader was refused admission at the gate until the missiles began to fly, the motor cycle police, during that ten to fifteen minute interval, were driving through the crowd and trying to disperse them?

A. That is correct.

Q. There was a rather large crowd there of ten or more thousand people, were there not?

A. Well, I couldn't say as ten thousand people.

Q. There was a very thick crowd?

A. There was a large crowd.

Q. And with the police driving through during this ten or fifteen minute interval? There was quite a bit of commotion, I suppose, and noise going on, wasn't there?

A. There was noise and talking.

Q. And were the people moving about as a result of being forced to move through the police?

A. They were.

Q. And the corner at Fifth and Luzerne was a rather heavily packed and exciting corner during that interval, wasn't it?

A. I wouldn't say any more than anywhere else.

Q. The whole thing was heavily—I mean, the whole street on Fifth and Luzerne Street, on both Fifth and Luzerne, was jammed with people, and there was a lot of excitement during the ten or fifteen minute interval, wasn't there, by reason of the police driving through, and so forth?

A. That is correct.

Q. And that was the interval from the time that

you left Mr. Leader on the steps until the missiles began to fly?

A. That is correct.

Q. And when the missiles began to fly, the place was raided, did subsequently the crowd move into the mill?

A. Well, I couldn't say. I left the sidewalk of the mill when the missiles flew.

Q. But from that moment on there was real tumult in the place, wasn't there,—

A. Well, I couldn't say.

Q. —real excitement?

A. I wasn't present up at the mill.

Q. Where did you go?

A. I was across the street.

Q. Oh, I am not saying you were in the crowd that went in, but from the minute that the missiles began to fly, then there was real excitement around there, wasn't there?

A. I wouldn't say from the minute.

Q. Well, even before that, there was real excitement as a result of the motor cycle police—

A. That is right.

Q. —driving through? Now, you are sure of everything you have said, is that correct?

A. Yes.

Q. When did Mr. Higgins, the preceding witness, find his fifteen to twenty minute interval to talk quietly with Mr. Leader on the corner,—

A. I don't—

Q. —as far as you know?

A. I haven't—didn't see Mr. Higgins.

Q. That is all. No, I have more questions; that, is all on that.

When you finally got into the office of Mr. Meyer

you said you were accompanied by Mr. Leader and Mr. Burge, and Russell and Howard Hammerl?

A. That is correct.

Q. Was anyone else there at that time?

A. There was two more Apex workers. I don't recall who they were.

Q. But while you were in the office of Mr. Meyer this mob of persons was milling about throughout the mill, were they not?

A. To my knowledge, yes.

Q. And you were in the office of Mr. Meyer after the office had been turned upside down by the mob, isn't that correct?

A. Mr. Meyer's office wasn't touched.

Q. Mr. Meyer has a private office in the back?

A. That is correct.

Q. Everything else was turned upside down in front of it in the general office, wasn't it?

A. From what I could see, yes.

Q. And Mr. Meyer had been hit in the back of the head by something, had he not?

A. I couldn't say.

Q. Did he appear dazed or injured, as far as you could see?

A. Well, he seemed very highly excited.

Q. Do you think he had reason to be excited, as far as you—

A. Yes, I think so.

Q. All right.

A. He might have had reason to be excited.

Q. It is true, is it not, that after the locks were changed on the various entrances to the plant the only keys to those locks were in your possession, or the door committee's?

A. No.

Q. Who else had keys?

A. There was two or three keys to each lock.

Q. Yes, and who had them? Did you have a set?

A. Different members of the committee had them.

Q. That is what I said. Maybe I didn't make myself clear. After the locks had been changed by the sit-downers and all new locks were put on, the keys to those new locks were in either your possession or in the possession of the members of the door committee of the sit-downers?

A. Well, that is right.

Q. Did you ever send a set of keys to Mr. Meyer, the president of that mill, in order that he could come into his own mill?

A. Mr. Meyer could get in any time he wanted to.

Q. Answer my question, please.

A. No.

Q. The answer was "No", wasn't it? I mean, you shook—I heard something. "No", you never sent a set of keys?

A. That is right.

Q. You never sent any other official of the company a set of keys, did you?

A. No.

Q. Now, you said before in your testimony, you referred to a question of laws, and you said there must be laws, everything is done by some law or other. Under what law were you acting when you acted as chairman of the sit-down committee, and the sit-downers remained in the possession of this mill for a period of seven weeks?

A. I didn't quite get your question.

MR. HIRSCH:

Read it, please, Mr. Rodebaugh.

(The question was repeated by the Reporter, as follows:

"Q. Now, you said before in your testimony, you referred to a question of laws, and you said there must be laws, everything is done by some law or other. Under what law were you acting when you acted as chairman of the sit-down committee, and the sit-downers remained in the possession of this mill for a period of seven weeks.")

A. Well, on that question I think it is—well, it is to—but it is the law, what I think you are referring to, and what I meant, was the Wagner Labor Act, you had the right to picket, you had the right for collective bargaining, you had the right if you wanted to belong to a union, you could belong to a union.

Q. Do you know which provision of the Wagner Labor Act—if there is any—permits you to break into your employer's mill and retain exclusive possession of it for seven weeks, against his will?

A. As far as I know, nobody had broke into a mill. There was no discussion about it or anything else.

Q. Now, will you answer my question?

A. No, I don't—

MR. SYME:

Well, I think that is a perfectly fair answer, Your Honor.

MR. HIRSCH:

I asked him about laws. I didn't ask him whether anybody broke into the mill.

MR. SYME:

I object to it, Your Honor. Mr. Hirsch asked him by what law he did that, and his answer is, "I don't think we did it".

THE COURT:

Well, what do you want? The question has been answered. I don't think there is any occasion for a ruling.

BY MR. HIRSCH:

Q. Now, you said before, and I just want to pick up on some of these details, that there was no door to the basement to be broken?

A. That is correct.

Q. There was a basement,—

A. That is right.

Q. ~~but~~ but no door?

A. There was a door, but it was a door that opened and shut, without a lock.

Q. But there was a door to the basement?

A. There was a door, that is correct.

Q. But before you said there was no door to the basement, didn't you?

A. That had to be broken open, yes.

Q. Oh. Now, was there a door in the basement to the electrician's cage that had to be broken open to get into?

A. There was a cage with a—same type gate on it as the cage itself was.

Q. And do you recall an incident in which the drawers inside the cage had been opened, and you

and Mr. Harper and the police went down to look into the incident, Mr. Harper being the maintenance man, to ascertain who may have done that. Do you recall that incident?

A. I don't recall the police, but I recall now that Mr. Harper and I went down to see about it.

Q. Don't you recall the police being there?

A. I don't recall the police. There may have been. I am not saying there wasn't.

Q. Does this refresh your memory, that when you went down with Mr. Harper to examine the drawers that had been broken into you took your handkerchief out of your pocket and went up to one of the drawers in a manner something like this (indicating) and opened the drawer with the handkerchief, and one of the police said, "You are a pretty smart fellow!" Do you remember that?

A. I don't recall.

Q. You don't recall it?

A. Not that incident, no.

Q. And don't you remember after the door to the roof had been broken open that Mr. Harper and you went up and examined it?

A. I don't recall that.

Q. Would you say you didn't?

A. I don't remember any door to the roof being broken.

Q. Now, do I understand your previous testimony on direct examination to be that there was never any complaint made to you about anything that was broken with the exception of a little window in the yard which was broken by a ball?

A. Not that I recall.

Q. In other words, do I understand that Mr.

Harper, who was the maintenance man there from day to day—was he not?

A. He was.

Q. —and it being admitted that considerable damage was done to machinery on June 10th and June 22nd or 23rd, that the only complaint that you received from him about damage was a window in the yard broken by a ball, he spoke to you about that?

A. That is, outside of the machinery that had been damaged on June 10th.

Q. Oh, you didn't say that before, did you?

A. Well, I took it for granted that was understood. When the damage to machinery was brought up Mr. Harper had his fingerprints taken and so did everyone else, so, naturally, we must have talked about it.

Q. But in your direct testimony you said, "The only complaint"—when Mr. Syme asked you—"The only complaint about any damage which I heard from Mr. Harper was about a window in the yard", and you broke that playing ball!

A. That is right.

Q. And now you admit a complaint about the damaged machinery at the time?

A. I am not saying he actually complained. We were talking about it at the time.

Q. Now, you say you don't know anything about counters. Do you know what a counter is? Isn't that a machine on the end of the table which permits you to count the number of pairs of hosiery so that when you get up to a dozen a bell rings, or something? Wait a minute, I want to make sure myself. Is that right?

It is an instrument that as you place a pair of hose a wheel turns like a turnstile in the subway, and then when you get to a dozen a bell rings so the girl, the person who is counting, doesn't have to say one, two, three, four, she can just keep putting them over, and then when the bell rings she knows she has a dozen?

A. Well, I don't know anything about that. I am a legger, not an examiner.

Q. Been there seven years?

A. That is correct; never allowed anywhere in the mill except on the fifth floor.

Q. That is where you work?

A. That is right.

Q. Now, you testified on direct examination by Mr. Syme that neither you nor any sit-downer, as far as you know, damaged this machinery?

A. That is right.

Q. That is correct, isn't it?

A. That is correct.

Q. On the morning of June 23rd, about 4:30

A. M., you were awakened and told machinery had been damaged?

A. Somewhere around that time.

Q. Where were you asleep at that moment?

A. On the second floor.

Q. And where did you find the machinery that was newly damaged during that night or the previous day?

A. Different places in the mill.

Q. What floors?

A. On the third, I think.

Q. The what?

A. The third floor, from the third floor up.

Q. What time did you go to bed that night?

A. Around eleven, twelve o'clock.

Q. And you were asleep until 4:30, when they awakened you and told you about it?

A. Somewhere from three to four o'clock, I don't exactly know what time I was awakened, but three, four o'clock.

Q. But you were asleep from the time you went to bed at eleven until the time at three or four when they awakened you and told you about the damage?

A. When I went to bed at eleven or twelve, yes, sir.

Q. How do you know what the other sit-downers were doing while you were asleep?

A. I said to my knowledge I don't know of any sit-downers that broke any machinery.

Q. Is that your answer?

A. That is correct.

Q. It is possible that every other sit-downer in the place could have done something while you were asleep, as far as you know, isn't it?

A. Well, there were men put on duty to watch things like that.

Q. I said as far as you knew.

A. Well, I guess it could have been done.

Q. And it is a fact, is it not, that when the Mayor of the City of Philadelphia went up to the plant of the Apex Hosiery Company on June 23, 1937, he led what amounted to a triumphal march of the sit-downers out of the mill, and congratulated them on the swell job they did.

A. I couldn't say.

Q. Didn't he make a speech?

A. He talked to the sit-downers.

Q. And didn't he congratulate them, and didn't

he tell them, even though they are on the outside now, they should fight on?

A. I don't recall him stating that.

Q. What did he say?

A. I remember him saying that the Court has ordered the sit-downers out of the mill and that they should go peaceful.

Q. And what else did he say?

A. And the strike was still on if they considered it on, and they would have to stay on the outside, the sit-down strike was ruled out.

Q. And isn't it a fact that he then got into his machine, and the machine slowly paraded around the entire building, led by the Mayor, with all the sit-downers and the rest of the members of the mill following in a parade?

A. I couldn't say. I was the last one to leave the mill. Everybody was out when I left.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. Just one minute, the night of May the 5th you testified that you were elected the chairman of the Apex Shop Association?

A. That is correct.

Q. Was there any question at the time before the Apex Shop Association of a sit-down strike?

A. Was there any question at that time of a sit-down?

Q. That is right.

A. There was none.

Q. Were you elected the chairman of a sit-down strike?

A. By the members, no; elected chairman of the shop, but not of a sit-down strike, by the members.

Q. Chairman of a Shop Association, and you continued chairman of that Shop Association after the strike was settled, isn't that right?

A. That is right.

Q. There was no sit-down strike then, was there?

A. No.

Q. You say you knew what was going on at the time and that there was a sit-down strike at Exide Battery. Do you know of any other sit-down strikes that were going on in the City aside from hosiery? Strike at the Heintz Automobile Body Manufacturing Company, isn't that right?

A. That is right.

Q. Was that a sit-down strike?

A. I recall now it was. It was mentioned.

Q. There were strikes all over the country, sit-down strikes. General Motors?

A. That is right.

Q. Was that a sit-down strike?

A. Yes.

Q. They are not members of the hosiery union, are they?

A. No.

Q. Mr. Leader didn't lead them, did he?

A. No.

Q. You got to the plant at 1:30,—

A. Approximately.

Q. Is that right?

A. 1:30.

Q. Was that pre-arranged, that you get there at 1:30?

A. No.

Q. How did you get there at 1:30?

A. Well, I saw people coming out of the mill somewhere earlier than that past my home, and I knew some of them, and I asked them what is the matter. They had overalls, and girls had everything they owned, and they told me that there is going to be a strike at the Apex, that we were ordered to get out until further notice, so I went up at 1:30. That is the time I generally went to work. I went up to see what was the matter. We had arranged to meet Mr. Leader at—through contact in the office, to upstairs, that we were coming down as the committee.

Q. You had arranged to meet Mr. Leader at what time?

A. Quarter of three he was to send for us.

Q. Quarter to three. You were to be at work at what time? What time did your shift begin?

A. 2:30.

Q. At 2:30, and he was to come to the office, is that right?

A. From the street, that is correct.

Q. From the street. After he was in the office, what was he to do?

A. Tell Mr. Meyer that the committee of the Apex and himself would like to have a meeting and talk things over, and that he should send for us, and he was going to give them the names.

Q. You have testified to the fact that you were never allowed anywhere else in the building except on the fifth floor. What do you mean by that?

A. Well, we were never allowed anywhere in

the mill. Well; even now we ask permission to go to any other floor.

Q. I don't understand that. Explain that to me.

A. Well, if we are seen on any other floor we are told to go back.

MR. HIRSCH:

I object to that.

MR. SYME:

You brought it up.

MR. HIRSCH:

I didn't bring it up.

MR. SYME:

You brought it up. You asked him about the fifth floor when he was—

MR. HIRSCH:

That is right,—

THE COURT:

I don't see what it has to do—

MR. HIRSCH:

Nothing at all to do with the case, unless Mr. Syme wants to show the plant is efficiently operated.

MR. SYME:

Your conception of efficiency and mine may be different.

THE COURT:

If you object to it as immaterial I will sustain the objection.

MR. HIRSCH:

I object.

BY MR. SYME:

Q. Isn't it a fact that there were a group of other people with the Mayor when he came to take the sit-downers out? Do you remember a group of police with him?

A. Yes, there was police.

Q. Do you remember a group of outside people that you didn't know at all?

A. Well, there was a group of people, not an exceptionally large group, but the ones I knew I had mentioned.

Q. But there were other people?

A. There was one man, I recall, was supposed to be Mayor Wilson's bodyguard or something, I don't know who he was, but that is what I was told or heard, or something, and he—I know he was there, for a fact.

Q. Do you know a Mr. Butler, who is vice-president of the Philco Radio Company?

A. No, I don't know him.

Q. You don't know him. Didn't you have a time—

MR. HIRSCH:

As long as you are identifying him, he is chairman of the Mayor's Labor Board.

MR. SYME:

Yes, but he is vice-president of Philco Radio.

MR. HIRSCH:

And he is also chairman of the Mayor's Labor Board.

MR. SYME:

Not at that time.

MR. HIRSCH:

Yes, he was.

MR. SYME:

Oh, no.

MR. HIRSCH:

Member of the committee of mediation.

MR. SYME:

He was a member of the committee.

THE COURT:

Will you please proceed with the examination, gentlemen?

BY MR. SYME:

Q. Mr. Etter, didn't the sit-downers have a particular time when they went to sleep?

A. Well, they were always—they all had to be in bed by twelve o'clock.

Q. They all had to be in bed by twelve o'clock. That was an established rule, is that right?

A. Yes, sir, that is right.

Q. And did you have a committee to look after that?

A. We had what we call a night patrol.

Q. You had a night patrol to see to it that all the sit-downers went to bed at twelve o'clock?

A. That is correct.

Q. So that by three or four o'clock practically everybody was asleep—

A. That is correct.

Q. —is that right?

MR. HIRSCH:

Of his own knowledge?

BY MR. SYME:

Q. Of your own knowledge?

A. Well, according to the rules and regulations, the way things worked. Some nights I didn't go to bed until maybe two o'clock, walked with the committee that was on duty to see that things were carried out.

Q. The patrol committee was under your direction?

A. Well, under the direction of the shop committee.

Q. And you were the chairman of the shop committee?

A. That is correct.

Q. Did you have a chairman of the patrol committee?

A. There was chairman of every committee.

Q. And did the chairman of the patrol committee report to you the events of that night?

A. I don't recall whether it was him or whether—

Q. Well, did he tell you whether the people were asleep or not?

A. Well, I went to sleep. He didn't bother—it was up to him, the responsibility was his and if it wasn't carried out he took the responsibility for—anybody that was awake and was reported awake, the next day it was his job to see that they were—they were to go to bed hereafter. That was his job. There was no—well, John Henry didn't go to sleep, and Joe comes up and squeals on him, there was none of that.

MR. SYME:

Yes, that is all.

Recross Examination

BY MR. HIRSCH:

Q. Just a second, did you ever see that card, or one like it, I mean?

(Postal card dated May 21, 1937 from William Leader, addressed to William Meyer, Jr., was shown to the witness.)

A. That is right, I have seen that card.

BY MR. HIRSCH:

Q. And do you recognize Mr. Leader's signature on that card?

A. Well, I think that is more or less of a stamp of some kind.

Q. I don't mean that he personally signed that card, but he signed the mimeograph that made that card, as far as you know? Do you recognize that signature—

MR. SYME:

Wait a minute,—

BY MR. HIRSCH:

Q. Do you recognize that signature as being on other documents of the Federation—

MR. SYME:

Wait a minute,—

MR. HIRSCH:

Now, make your objection at side bar, if you please.

MR. SYME:

All right.

(Discussion at side bar.)

BY MR. HIRSCH:

Q. Do you recognize this as being the signature which appeared on the various communications of the union?

A. Well, I wouldn't want to say that is William Leader's signature, because I really don't know his signature.

THE COURT:

All right.

BY MR. HIRSCH:

Q. But do you recognize that signature as being the signature which appeared on various—

MR. SYME:

No, the man has answered the question.

MR. HIRSCH:

No.

MR. SYME:

Oh, I am sorry.

MR. HIRSCH:

He didn't answer my question.

BY MR. HIRSCH:

Q. Do you recognize that signature as being similar to signatures which you have seen on official communications of the union from time to time?

A. The signature I generally see on official orders or any official papers coming from the union

for the benefit of the shop, that they read, what went on in the meeting, or anything there, I think is generally signed William M. Leader, if I am not mistaken.

Q. Have you ever seen that signature before?

A. On this card, that is all.

Q. And on any other paper?

A. Not that I recall.

MR. HIRSCH:

Have that marked for identification, please.

(Postal card dated May 21, 1937, from William Leader, addressed to William Meyer, Jr., was marked Exhibit P-25 for identification.)

THE COURT:

Is that all, gentlemen?

MR. HIRSCH:

That is all.

EDWIN MORRIS, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Morris, you are the president of the Radio and Television Workers Union, Local 101, is that right?

A. That is correct.

Q. How many members does your union have?

A. Well, it varies from time to time. At the present we have around fifteen hundred actually working members.

Q. How many did you have in 1937, around May?

A. Approximately seven thousand.

Q. Approximately seven thousand. Where do all of your members work?

A. In the Philco plants.

Q. In the Philco Radio plant, and is the Philco Radio plant near the Apex Hosiery Company?

A. The Philco Radio plants are at C and Ontario and Tioga Streets, and at Front and Venango, and at A and Allegheny.

Q. And is that near the Apex Hosiery Company?

A. Well, it is according to what you call "near". It is within ten or fifteen squares.

Q. Northeastern part of Philadelphia,

A. That is correct.

Q. —isn't that right? Where do you live, Mr. Morris?

A. Why, I live at 3426 North American Street.

Q. That is in the northeastern part of Philadelphia?

A. That is correct.

Q. How many years have you been living in the Northeast?

A. Well, practically all my life.

Q. How long is that?

A. Twenty-eight years.

Q. How many years are you president of your union?

A. Since 1937, of July.

Q. And before that what did you do?

A. I was shop representative, a steward in the plant.

Q. But you worked in the Philco Radio plant, is that right?

A. That is right.

Q. On May 6th, 1937 was the Philco Radio plant out on strike?

A. I am pretty near positive.

Q. Was that a sit-down strike?

A. No, it was not.

Q. Your eight thousand members were not at work?

A. Not any of them.

Q. Not any of them. On May 6th, 1937 where were you around—oh, two o'clock, it doesn't—

A. Well,—

Q. It doesn't matter.

A. Well, I was either at the plant or in the union office. I was either one of the two places practically all the time.

Q. And did you notice anything peculiar at about, oh, two or two-thirty?

A. Well, I can't actually say it was on May 6th or what day it was, but—

Q. Well, the day of the disturbance.

A. Near—

Q. At the Apex.

A. The day of the disturbance at the Apex I was on duty as captain of the picket lines of Plant 2, which is the Philco Storage Battery Company, at C and Ontario.

Q. How many pickets did you have around the plant?

A. Well, we had a change-over of anywhere from eight hundred to fourteen hundred. It varied in days.

Q. And what happened? Go ahead, tell your story.

A. Well, from time to time on the picket line, which I was back and forth from the union office,

which is at Front and Westmoreland Streets, between there and the plant, I had to go to report certain incidents that may happen from time to time, many—many of our members upon leaving the union office had wondered what all the policemen were doing at Front and Westmoreland at the station house. I heard many remarks, such as, "These men are being assembled here for—to go to the Apex plant at Fifth and Luzerne." At the picket lines I heard our members say that they were going there to see just exactly what was going to happen there, because when they assembled all these policemen, why, it looked like some trouble was going to arise there and they would like to see what it was.

Q. And you saw many of them leave the picket line or leave the Philco plant?

A. I have seen them leave the union office saying that they may go there.

Cross Examination

BY MR. HIRSCH:

Q. How many did you see actually go there?

A. I didn't see any of them go there.

Q. And do you—

A. I said they left with the intentions of going there.

Q. And as president of this union—

A. I wasn't president at that time.

Q. Well, as captain at that time of the picket line would you want to say at this time that any members of your union went up to the Apex plant and assisted in breaking into it and destroying it on May 6th?

A. No, I think we have a very good union. I don't

think that our members would involve theirself into something like that, but I do think it is possible that some of our members may have been present at the time the disturbance was caused up there.

Q. But if present they did not participate?

A. I doubt if any of them would do it.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. You are not associated in any way with Mr. Leader, I mean, with the Hosiery Workers union, are you?

A. No.

MR. SYME:

That is all.

FREDERICK S. WEBER, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Weber, are you an employee of the Phileo Radio Company?

A. That is right.

Q. Are you an official of the union?

A. Not an official, no.

Q. You are not an official, you are a member—

A. That is right.

Q. —of the Radio and Television Workers, 101, or 102?

A. 101.

MR. HIRSCH:

That is the same one as Mr. Morris was?

MR. SYME:

That is right.

BY MR. SYME:

Q. Were you around the Apex Hosiery Mill on May 6th?

A. Well, several times we rode around there, and then later on I was—I stopped to pick my wife up. She works at Gibbs, A and Indiana.

Q. Gibbs Underwear?

A. That is right. There is about five I pick up there, my inlaws, so on the way up we stopped at Apex, and then we just kept walking around. I know a lot of fellows up around there.

Q. And did you see any Philco workers there?

A. Plenty of them.

Q. You saw plenty of them.

MR. SYME:

That is all.

Cross Examination

BY MR. HIRSCH:

Q. How many did you see break into the mill and destroy furniture and fixtures?

A. Well, when I got there, why, that was all finished.

Q. So you don't know how many Phileo Radio workers were there at the time the mob broke in?

A. No, I don't know that.

Q. And do you think that any of the members of your union would break into the Apex plant and destroy furniture and equipment?

A. Well, I don't know, I mean, I only know them from working, I don't know what they do when they go outside.

Q. What do you think about them? You know them.

A. Well, you can't have an opinion of ten thousand people, I mean, I can't tell what they do when they go out.

Q. But you didn't see anyone.—

A. I didn't see any.

Q. —of your members coming out of the mill, did you?

A. No, I didn't see anybody going in, either, I didn't see anybody, they were just all walking around outside.

Q. What time was it when you got there?

A. It was about 5, 5:15.

Q. That was after everything had happened?

A. Well, all the windows were broke as far as I could see.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. But there were plenty of Phileo people there, is that right?

A. Well, I saw a lot of people from Fifth and Wyoming, I met a lot of fellows down there that I know, was down there.

Q. Did you see workers from other industries there that you know?

A. I don't know where they work, but they don't work at Apex, because they bum up at Fifth and Wyoming there.

Q. Do you know whether they work as hosiery workers?

A. There may be some, but I don't know all of them.

THE COURT:

Well, now, gentlemen, there is no dispute about the fact there were a very large number of people in that crowd, must have been, who were not Apex employees. Is there any use calling a witness for that?

MR. SYME:

It is not a question of Apex employees, it is a question of whether they were hosiery workers.

THE COURT:

Well, they may not have been hosiery workers.

MR. SYME:

Well, that is not Mr. Hirsch's contention.

THE COURT:

I see your point.

MR. SYME:

It is Mr. Hirsch's contention that this was engineered.

THE COURT:

I see your point. Go ahead.

MR. SYME:

That is all.

Recross Examination

BY MR. HIRSCH:

Q. Wait a minute, you said there were plenty of Philco workers up there. Just tell us exactly—well, not exactly, but as best you can recollect how many you remember seeing there.

A. Well, when you walk around in crowds you aren't bothering to count. You don't expect to do anything like this.

Q. I appreciate—

A. You just say, "Hello, what do you think it is all about?", and all that stuff.

Q. Well, how many times do you recollect, approximately, you said "Hello"?

A. I might have said "Hello" a couple times to the same fellow, I don't know, when walking all around.

Q. How many do you think were up there that you recall of the Philco?

A. I wouldn't give any number, because I never had any occasion to count them.

BY THE COURT:

Q. Well, now, you have some idea. I mean, you know whether there were ten thousand or ten, don't you? Which was nearer the number that you saw there?

A. It was above ten and it was less than ten thousand.

Q. Yes, well, would you say you saw a hundred of your workers there?

A. Well, I don't like to make any particular number.

THE COURT:

Well, your testimony is of very little value if you can't tell us within ten to ten thousand how many were there. Let it go at that if you want to. It is all right.

All right, call another witness.

Redirect Examination

BY MR. SYME:

Q. Can you tell the Court approximately how many people you saw there?

A. Of the crowd?

Q. Yes.

MR. HIRSCH:

No, of the Philco.

BY MR. SYME:

Q. Not of the crowd; approximately how many people you saw—

THE COURT:

Well, he says he can't. I think you better let it go at that. It is all right if he can't.

BY MR. SYME:

Q. —whom you recognized as not hosiery workers.

A. I would say about one hundred, one hundred and fifty.

Recross Examination

BY MR. HIRSCH:

Q. Were they all Philco people?

A. No, wasn't all Philco people.

Q. So including the Philco people and everyone else whom you recognized as not being hosiery workers, you would say one hundred to one hundred and fifty?

A. Probably.

BY MR. SYME:

Q. That was about five to five-fifteen?

MR. HIRSCH:

Let me finish, please.

MR. SYME:

All right.

THE COURT:

Well, now, gentlemen, this witness has been examined and re-examined. I don't think I will hear any more questions.

MR. HIRSCH:

All right.

RICHARD DOYLE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Captain Doyle, you are a captain in the Philadelphia Police Department, is that right?

A. Acting captain of detectives.
Q. Acting captain of detectives. Were you at the Apex Hosiery plant on June 10th?

A. No.

Q. You were not? Were you at the Apex plant on May 6th?

A. No.

Q. When did you first go into the Apex Hosiery plant, Captain?

A. On June—I will have to look at notes.

(The witness consulted notes.)

A. (Continued) June 12th.

BY MR. SYME:

Q. On June 12th. Who sent you over there?

A. The Mayor.

Q. And what did the Mayor say to you?

A. There was rumors around that he—

MR. HIRSCH:

Well, I think this is objectionable, Judge Kirkpatrick,—

THE COURT:

Yes.

MR. HIRSCH:

—the conversation.

THE COURT:

I do, too. You can tell what you did and saw at the plant, but I don't think that—

BY MR. SYME:

Q. What was the purpose of your going to the Apex plant?

A. To report to the Mayor whether or not any machinery had been broken.

Q. And you got to the plant on June 12th, and whom did you see there?

A. At the plant I seen Mr. Etters.

Q. Anybody else?

A. Well, there was quite a few around there but I don't know them by name.

Q. But Mr. Etter is the man whom you first saw,—

A. That is right.

Q. —is that right?

A. Who I saw and spoke to.

Q. Yes, and what did Mr. Etter say to you?

A. I told him my purpose there and he unlocked the door and let me in. I then asked him who he was and what he was, and he explained to me that he was captain of the pickets, of the sit-downers, and that he was in complete charge of the people who were on sit-down strike in the mill at that time and had been since the sit-down strike started.

I said, "Well, you are the gentleman that I want to talk to, and I want you to show me any machinery that has been damaged in this mill within the last couple of days".

BY MR. HIRSCH:

Q. Pardon me, Captain, you are refreshing your memory from some paper?

A. No, not at this minute.

Q. I have no objection if you do.

A. Not at this minute.

Q. All right, when you do will you let me know?

A. Yes, sir.

Q. Because I would like to look at the paper with you.

A. Yes, sir. I asked Etter, was there any machinery damaged in the plant on the fourth floor?

He said, yes, there had been considerable damage done to the machinery, the needles had been broke on quite a number of machines.

I asked him to take me to the fourth floor where the damage was done. He and several others, who I don't know their name—I think one name was Cherry—took me to the fourth floor, where I examined the machinery that was broken. There were quite a number of machines with the needles broken and bent over. There was stockings coming out of the machines, and the needles—broken needles had fell on them, it was damaged, the goods coming out of the machine, which I take it was in manufacture at the time.

I checked the machines, took the numbers of them and the number of heads and other things about the machines, the names of which Mr. Etter told me the names, what they call them in the hosiery industry, made a count of them, and then had a talk with Mr. Etter.

I asked him would he—would he be satisfied to tell me what he knew about the damage to the machinery and give me some idea, if he had any ideas, as to who, when and why it was broken.

He said he had no objections. I had a stenographer, a police stenographer with me at the time, together with two other detectives. We sat on the fourth floor. Before we started to talk we had went

to the third floor, where there was—I will have to look at notes to tell you the exact numbers of—

THE COURT:

I don't believe we need the exact numbers. You go ahead and tell your story. Condense it as much as you can, Captain. I don't think we need that.

A. (Continued) After examining the machinery on the third floor, there was a small number of machines damaged there compared with the fourth floor, I sat down and had a conversation with Etter. This conversation was taken down in writing. He told all—

MR. HIRSCH:

Now, just a second, please. I object to any conversation that took place between Captain Doyle and Mr. Etter when there was no representative of the plaintiff company there. It does not go to the res gestae, and Mr. Etter may have made any declaration that day without our being in any position to refute.

THE COURT:

I think that is a sound objection.

MR. SYME:

All right.

THE WITNESS:

He told in a—

THE COURT:

No, that has been sustained.

THE WITNESS:

I beg your pardon.

MR. HIRSCH:

It has been ruled out as to what he said.

THE WITNESS:

I didn't hear him, I beg your pardon.

THE COURT:

Not what he said.

BY THE COURT:

Q. What did you do in pursuance of what you talked about with Mr. Etter?

A. I reported it to the Mayor.

Q. Did you do anything else at the plant?

A. Other than take this statement from Mr. Etter.

Q. That is all you did?

A. That is all.

THE COURT:

All right.

BY MR. SYME:

Q. Did you try to take fingerprints?

A. Yes, sir.

THE COURT:

That is what I was referring to.

BY MR. SYME:

Q. And did Mr. Etter offer you full cooperation on that score?

A. Mr. Etter explained to me that this damage had happened a couple days before I was in there. He explained that they—

MR. HIRSCH:

Please, Captain, don't tell us what he said.

THE COURT:

Yes, I don't think you can tell us what was said there.

A. (Continued) Well, he showed me a lot of papers that he had taken fingerprints, and he at that time stated that they were the fingerprints of everyone in the mill.

BY THE COURT:

Q. Did you take any fingerprints?

A. No, sir.

Q. Did he give you those papers?

A. Gave them to me for examination.

THE COURT:

I see. All right.

BY MR. SYME:

Q. Did he ask you to take fingerprints?

A. Yes, yes, sir.

Q. And you didn't take fingerprints? Why, Captain?

A. Well, I am not—

Q. You are not a fingerprint expert?

A. I am not qualified to take fingerprints.

Q. Yes.

A. But I did send for a fingerprint expert, who came to the mill in half an hour's time, and examined the prints that Mr. Etter gave me for examination. Our fingerprint expert said they were of no value.

The fingerprint expert then examined the ma-

chines that were damaged, in an effort to take fingerprints, and these machines being covered with a film of oil, he then said that it was impossible to take a fingerprint from them.

Q. Now, the fingerprints—oh, I am sorry, Captain, I didn't want interrupt you.

A. Etter had a three-cornered paint scraper which for some reason or other he believed that was the instrument used in doing the damage to these needles. Our fingerprint expert examined that, which also was covered, soaked with oil, and of no value.

At that time our fingerprint man, who was an expert with twenty years' experience, said that it is impossible to take a fingerprint off any of the machines or any part of the machinery, due to the fact that they were all covered with oil.

Q. Now, Captain, when Etter gave you the fingerprints did he give you the fingerprints of all of the people in the mill?

A. Well,—

MR. HIRSCH:

If you know, Captain.

THE WITNESS:

I don't know.

MR. SYME:

Yes, if you know.

THE WITNESS:

I don't know whether they were their fingerprints, but these fingerprints that he had were taken in a way that it was an amateur taking them, not the way that regular fingerprints are

ruled by the police or fingerprint experts, by fingerprint experts.

BY MR. SYME:

Q. Yes, but do you know whether they were the fingerprints only of the maintenance people or whether they included the fingerprints of all or a substantial number of sit-downers.

MR. HIRSCH:

Now, Captain, you are asked a question—

THE WITNESS:

That I don't know.

MR. HIRSCH:

All right.

THE WITNESS:

I don't know that, whose fingerprints they were, if anybody's. In fact, they didn't look like fingerprints, they were taken in such poor shape.

MR. SYME:

That is all. Cross examine.

MR. HIRSCH:

No questions, Captain.

THE COURT:

The Court will recess for ten minutes.

(Recess at 3:15 o'clock P. M.)

THE COURT:

Members of the jury, I have asked counsel to spend the balance of the afternoon conferring with me in chambers in an effort to go over the testimony that still is to be offered, to see whether it can be shortened by the elimination of some of it which would be largely repetition, and I believe that we can save a great deal more time for you and for all of us by spending the next hour in that way rather than by going on with the case here, and I don't think that I will ask you to sit tomorrow. I think that we are all of us pretty well saturated with the case, and possibly a little tired, and so I will ask you to come back here and be in your places Monday morning at ten o'clock.

Now, please remember the caution that I gave you, I don't need to repeat it, but be very careful about it, because any indiscretion on the part of any of you might result in a mistrial and cause a complete loss of all the time and money that has already been spent in trying this case, so be on your guard and don't permit anyone at all to talk to you about the case, in any phase of it.

You may adjourn until Monday morning at ten o'clock.

Adjourned until Monday, March 20, 1939, at ten o'clock A. M.

In The

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 19950

March Term, 1937

APEX HOSIERY COMPANY, a Pennsylvania
Corporation

vs.

WILLIAM LEADER, ET AL.

Before: Hon. WILLIAM H. KIRKPATRICK, J., and a
Jury.

Philadelphia, Pa., March 20, 1939

Sixth Day

Present:

SYLVAN H. HIRSCH, Esq.,
ARNO P. MOWITZ, Esq.,
SUNDHEIM, FOLZ & SUNDHEIM, Esqs., representing
the Plaintiff.
M. HERBERT SYME, Esq.,
BENJAMIN R. SIMONS, Esq.,
MAURICE ABRAMS, Esq.,

ARTHUR V. MEIGS, Esq.,
SYME AND SIMONS, Esqs.,
ISADORE KATZ, Esq., representing the Defendants.

Defendants' Evidence (Continued)

THE COURT:

All right, gentlemen, we are ready to proceed with the Apex Hosiery matter.

MR. SYME:

Your Honor, will you see us at side bar for a moment?

THE COURT:

Yes, all right.

(Discussion at side bar.)

MR. SYME:

Your Honor, will you grant us a recess for five minutes? We would like to talk to our principals.

THE COURT:

All right. I think we might suspend until 10:30 this morning.

(Recess at 10:10 o'clock A. M.)

MR. SYME:

Mr. Meyer. Calling Mr. Meyer for cross examination.

THE COURT:

Very well.

MR. HIRSCH:

You mean as for cross?

MR. SYME:

As for cross examination.

MR. HIRSCH:

As for cross.

WILLIAM MEYER, recalled.

Cross Examination

BY MR. SYME:

Q. Mr. Meyer, you are a member of the Full Fashioned Hosiery Manufacturers of America, isn't that right?

A. Yes.

Q. And the Full Fashioned Hosiery Manufacturers of America and the American Federation of Hosiery Workers are under contract, as far as you know?

A. I understand that is right.

Q. And what is the Full Fashioned Hosiery Manufacturers Association, just briefly, in general?

A. An association of manufacturers.

Q. Yes, and you enter into contractual relationships with the union, is that right?

A. Yes, since I signed the agreement—

Q. That is right.

A. —with the union.

Q. That is right. Prior to that, of course, you did not.

A. Prior to that I was no member of that association.

Q. And you are bound by this contract that has been entered in 1938, is that right?

MR. HIRSCH:

Now, I am going to object to this line of questions, from here on, because it has no relevancy to this case. He is now talking about matters which occurred long after this particular incident. It has no bearing on the case, no relevancy,—

THE COURT:

Well, apart from that,—

MR. HIRSCH:

—and I object to it.

THE COURT:

—it has already appeared a number of times in evidence that the Anex Hosiery Company now has a contract for a closed shop with the union.

MR. HIRSCH:

Yes.

THE COURT:

And if that is all that we are getting at I wouldn't say it was necessary to go any further. That is in evidence now.

MR. SYME:

No, we are going beyond that, Your Honor.

*William Meyer Called on
Cross Examination*

MR. HIRSCH:

That is what I object to, sir.

THE COURT:

Well, I don't know what the purpose is, I can't say.

MR. HIRSCH:

May we have an offer of proof at side bar?

THE COURT:

Yes.

MR. KATZ:

May I state, if Your Honor please, that this is preparatory to a motion that the defendant intends to make?

MR. HIRSCH:

May I have that at side bar too?

MR. KATZ:

The motion?

MR. HIRSCH:

Whatever you intend to do.

MR. KATZ:

I don't think so.

THE COURT:

Well, let's proceed a little with the agreement, see where it gets.

MR. HIRSCH:

I think it is totally irrelevant.

THE COURT:

It may be, I can't tell yet, until I hear a little more about it.

BY MR. SYME:

Q. When was the last agreement executed between the Full Fashioned Hosiery Manufacturers Association—that is, the Full Fashioned Hosiery Manufacturers of America—and the American Federation of Hosiery Workers?

A. You mean the three-year agreement?

Q. That is right.

A. I think it was August 31, 1938, if I remember correctly.

Q. It is July 15, 1938, isn't that right?

A. No, I thought it was August 31st.

Q. It became effective August 31st, but it was executed on July 15th,—

A. That may be correct,—

Q. —1938?

A. —yes.

Q. You are bound—

MR. HIRSCH:

Now,—

BY MR. SYME:

Q. —by all of the terms and provisions of that agreement, isn't that so?

MR. HIRSCH:

—I ask for an offer of proof at side bar,
Judge Kirkpatrick.

MR. SYME:

Your Honor, I will be through in a minute.

MR. HIRSCH:

I don't know where they are going, or how

*William Meyer Called on
Cross Examination*

far. I think that it is my privilege to have an offer of proof and have you pass on the propriety of it.

THE COURT:

Yes, I think so.

(The following occurred at side bar:

MR. KATZ:

Defendant offers to prove that in the contract in existence, and binding, in existence between the union and the plaintiff, there is a clause which provides as follows:

"The impartial chairman shall have jurisdiction of and the duty and power to decide and adjudicate all matters in dispute between the union and the association and/or members involved, and the union and the association and/or member agree to be bound by and abide by the decisions of the impartial chairman".

MR. HIRSCH:

Now, that is objected to.

MR. KATZ:

That is the offer of proof.

THE COURT:

Well, I don't see that it can do any possible harm if there is a legal question involved.

MR. KATZ:

There is a legal question.

THE COURT:

Let's get it in the record and dispose of it. I see what the point they are making is. I will

permit you to show that term in the agreement. If it is irrelevant I won't permit any argument to the jury to be based on it. In other words, it really ousts the jurisdiction of this Court—

MR. KATZ:

That is correct.

THE COURT:

—if you are correct. Why don't you concede here at side bar there is such a term in the agreement?

MR. HIRSCH:

All right. That will end the argument.

THE COURT:

All right, Mr. Hirsch concedes that there is such a term in the agreement and that the defendants are bound by the agreement.

MR. HIRSCH:

Are parties.

THE COURT:

That is, are parties to the agreement.

MR. HIRSCH:

But I object to the relevancy of it and the admissibility of it,—

THE COURT:

I understand.

MR. HIRSCH:

—and ask for an exception.

THE COURT:

'Oh, I understand. That will have to be taken up on a point.)

MR. SYME:

That is all, Mr. Meyer.

MR. KATZ:

Now, if the Court pleases, the defendant moves in accordance with the provisions of Section 3 of the Act of February 12, 1925, 43 Statutes 83, that the action or proceedings presently before the Court be stayed and the matter be referred to arbitration in accordance with the agreement between the parties hereto, which provides in accordance with the offer of proof and admission made at the bar of the Court.

THE COURT:

Let me see the Act.

Well, the motion is denied at the present time. We will conclude the testimony on the matter of liability, permit it to be renewed, and consider it after the conclusion of the testimony.

MR. HIRSCH:

I think it is obvious, if Your Honor please, that the new agreement of '38 and its provisions only applied prospectively, and cannot possibly apply to any preceding actions that were taken.

THE COURT:

I am not making any ruling, I am merely

overruling you at the present time, with leave to renew it when the testimony is closed.

MR. SYME:

With this, Your Honor, the defense rests as to liability.

Plaintiff's Evidence in Rebuttal

MR. HIRSCH:

Huey Brown; calling this witness as for cross examination, he being a party to the action.

THE COURT:

Very well.

ULYSSES G. BROWN, recalled.

Cross Examination

BY MR. HIRSCH:

Q. Mr. Brown, will you produce the minutes of the regular membership of Branch 1 for the year 1937?

(The witness produced the minutes.)

BY MR. HIRSCH:

Q. Do you have the minutes before you of the meeting of the general membership of Branch 1 held on September 11, 1937?

A. I have.

Q. And will you produce them, please?

THE COURT:

What is the date?

MR. HIRSCH:

September 11, 1937.

(The witness produced the minutes.)

BY MR. HIRSCH:

Q. Is this the general membership?

A. That is right.

Q. Do you have here the report that Mr. Leader made to that meeting? There was a report made to that meeting, excerpts of which have been given me by the Special Master appointed by this Court.

A. There is no record of a report in the minutes.

Q. It is the regular meeting. Look at the meeting of your executive board and see if you incorporated therein a report of what transpired at your general membership.

A. About that time?

Q. At September 11th. Look at both. I will show you what I am looking for. Maybe that will help you; that excerpt.

(A paper was shown to the witness.)

MR. HIRSCH:

Counsel for your union has agreed that I may show you this copy, and you agree that that is an excerpt from the minutes of the reg-

ular membership meeting of Branch 1 of September 11, 1937.

MR. SYME:

That is correct.

THE WITNESS:

Just the part marked in red pencil?

BY MR. HIRSCH:

Q. Yes, you kept those minutes, did you not?

A. That is right.

Q. Now, read the minute you have regarding what Mr. Leader is purported to have said to that meeting, which I have underlined in red pencil.

A. "My next suggestion is to do away with the kitchen immediately. Now that all the strikes are being conducted on the outside,—"

Q. You keep the minutes of all the meetings, do you not, both regular membership and executive board?

A. That is correct.

Q. And at succeeding meetings do you read the minutes of the preceding meeting, as Mr. Leader has testified is done?

A. That is correct.

MR. HIRSCH:

I offer that excerpt in evidence as being an excerpt from the minutes of the regular membership meeting of Branch 1, dated September 11, 1937, in which William Leader is reported to have said:

"My next suggestion is to do away with the

kitchen immediately. Now that all the strikes are being conducted on the outside, I do not believe it is a practical thing from a financial end to keep this kitchen going."

BY MR. HIRSCH:

Q. I show you a report on what purports to be a report of the executive board meeting of the Federation of Full Fashioned Hosiery Workers, dated July 13, 1937. Is that a mimeographed copy of the report of that meeting and prepared by your union?

THE COURT:

July what?

MR. HIRSCH:

13. 1937.

(A paper was shown to the witness.)

A. I don't recall a report of this sort being given out from the executive board. This was not the custom.

BY MR. HIRSCH:

Q. Well, now, just take a look at that. Who prepared that? I don't say whether it was given out; was there such a report prepared?

A. I couldn't say.

Q. Well, was it the practice of the union to prepare mimeographed copies of a report? Did you ever see reports of that kind—

A. Not that I recall.

Q. —before? Where do you think that report came from? Have you any idea?

A. I haven't the slightest idea.

Q. Will you produce the minutes of the executive board meeting of July 13, 1937?

MR. HIRSCH:

I am showing the witness—when I said the report—Plaintiff's Exhibit 21 for identification.

MR. SYME:

What date is that?

MR. HIRSCH:

July 13th.

BY MR. HIRSCH:

Q. Do you have those minutes?

(The witness produced minutes.)

BY MR. HIRSCH:

Q. This is the executive board?

A. That is right.

Q. What does 37 H-31 mean in the upper right-hand corner?

A. I couldn't tell you.

Q. Who else other than yourself might prepare such a report for the union of a meeting that was held, in which the details of that meeting are given?

A. I don't recall of any reports made of—the details of meetings, or any general report of meetings that might be made.

Q. Do you recall whether or not there was a meeting held at any time in July of 1937 where the question of bills was voted upon, including the doctor's fee during the sit-down strike, a bill for the Bell Telephone, bill for Remington-Rand, and office supplies? Do you recall—

A. Well, they are—they are general bills and we have that type of bill almost every meeting. I couldn't say whether on a certain date that that type of bill had been voted upon.

Q. Do you recall a meeting in July where the question of one hundred girls present from the Quaker Hosiery Company was taken up, their case being taken up?

A. I do not.

Q. Where they contended that they had been fined by the Quaker Shop Association? Do you recall that controversy?

A. No, I can't recall; although—although we have had—that is the general business of the union, cases of that type. It may have been, I can't recall.

Q. Do you recall making a motion that the Quaker members retire upstairs and hold a meeting of their own to determine whether or not they should pay the one dollar fine, you having made that motion?

A. I don't recall it.

Q. Do you recall any meeting where the Torresdale Sit-down Strike String Band then entertained the members with a thirty-minute program of songs and music.

A. No, not to my knowledge. Do you—pardon me—do you say that there is a note in there that I made a motion?

Q. Yes, Brown.

A. There is no—we never—during 1937 we didn't at any time that I recall put the names of motion makers on the books.

Q. A motion was then made by Brown,—

A. It is a recent procedure.

Q. —which says that the Quaker members go upstairs.

A. That wasn't the procedure of '37. It is a recent procedure in the union.

Q. And, therefore, you never saw this before?

A. I don't recall having seen that.

MR. HIRSCH:

That is all.

MR. SYME:

No questions.

MR. HIRSCH:

I offer at this time exhibits that were previously marked for identification, the first being the bill of Weil's Curiosity Shop dated May 7, 1937, as Plaintiff's Exhibit 20, and the next, Mr. Leader's message to hosiery workers, previously marked for identification as Plaintiff's Exhibit number 19.

MR. SYME:

Wait a minute; wait a minute, that wasn't proved, Your Honor, we object to its admissibility.

MR. HIRSCH:

He admitted sending this letter out to all of the workers.

MR. KATZ:

Mr. Leader?

THE COURT:

Which letter is that? I don't recall.

MR. HIRSCH:

That is that message, that he had political affiliations.

THE COURT:

I think he did. That is correct, isn't it?

MR. KATZ:

I don't remember.

THE COURT:

Well, it may be on my notes, I don't know.

No, I haven't got that.

MR. HIRSCH:

And my offer of this letter is for the limited purpose of proving the line of cross examination that I conducted with Mr. Leader as to political affiliations, and I have already, I think, stated of record the particular excerpt from this report for which purpose the offer of this document is made, namely, to prove that that excerpt was contained in the report.

MR. KATZ:

That's right.

THE COURT:

All right.

(A copy of Exhibit P-19 follows:

Exhibit P-19

"ATTENTION—

HOSIERY WORKERS

**A PERSONAL MESSAGE TO HOSIERY
WORKERS FROM YOUR PRESIDENT,**

WILLIAM M. LEADER

I believe at this time a brief summary of your trade, including the happenings of the past

year, the present crises in your industry, and your future prospects is in order, along with one or two other incidents that are of interest and of importance to you as a member of the Union and depending on the hosiery industry for a livelihood.

Since January, 1937, there have been the following thirty-seven (37) manufacturing plants signed up with the Local under closed shop agreements for the first time in the history of the industry.

Alex	Jolly	Strahan
Arlington	Lafayette	Sunrise
Arcraft	Lucille	Sutro
Bamback	Marnet	Tackawanna
Brooks &		Triangle
Anderson	Martha	Venus
Collins	O. K.	Whitehall
Danita	Opal	Woodland
Diana	Penn Rose	(New closed
Fahrback	Richardson	shop agreements
Federal	Lee I. Robinson	in about eight
Fox Chase	Rodgers	(8) finishing
Integrity	Schuster	plants.)

In addition new closed shop agreements were signed in such shops as the Quaker—an agreement in the Apex which will turn out to be a closed shop agreement before March and where we now have two thousand members out of two thousand five hundred on the check-off.

An accurate check-up shows since January more than seven thousand new members in our Local—signed agreements with ninety-three

Exhibit P-19

hosiery mill and finishing and dyeing plants—
involving more than fifteen thousand members.

Without going into specific details, there have been strikes settled lasting from one hour up to seven months. Some which were as vicious as any ever experienced in the hosiery industry. The Union did not lose one strike and in that whole nine-month period not more than ten members of the Union were arrested—all of these minor charges, and that proves, if nothing else, that all strikes were conducted in a legal, peaceful manner by the Union and resulted in complete organization and collective bargaining in all these Philadelphia shops.

Strikes still in progress are Brownhill-Kramer and Oswold and Crystal shops, involving about 500 workers.

The next move, I believe, and one that is important, is to retrench where necessary and also hold the gains we have made in a practical manner.

I know the members pay high dues and assessments. I know they are anxious to have these assessments reduced as fast as possible. The feeling of all of us on this point seems to be unanimous. In line with these thoughts, I make the following suggestions as a plan to hold our gains and run our Union on a practical basis, from personal observation and from the one who took the entire responsibility for your recent organization drive:

We had a group of about twenty-five organizers and trustees who have done yeoman serv-

ice in the past year in all the strike situations. The names of these members should go into the Union records as a memory for all old and new Union members to remember. Men who have put in hours of hard work each day and every day of the week—sacrificed health in some cases—always rushing danger, with but one goal in mind, win whatever strike they were assigned to at that moment. True, they were paid their average mill wage while on the job, but no money could ever buy the courage and effort these men put into their work to win a 100% organized industry for the Hosiery Workers in Philadelphia.

But now their task is about completed. Some have jobs to go back to, others have not.

These men, take my word for it, deserve every consideration the Union can give them! I would suggest that the Union instruct me to send a letter to President Rieve of the Federation asking him to consider the names of all the men who did organization work for the local as prospective organizers for the Federation.

I also want to take this time to thank the other members of the Local who acted as part-time organizers and those that were voluntary organizers. Without the help of all, including other members who came around the strikes from time to time and offered encouragement, we could never have achieved our accomplishments.

I want to bring out that in order to hold our shops in line, give them service which they are entitled to, so that Union rules are adhered to,

Exhibit P-19

Union conditions upheld, grievances taken up in the proper manner and at the proper time, and so we are assured that Union rates at all times prevail, I believe and suggest that we divide Philadelphia in six (6) districts; and install six District Stewards to be paid at the rate of \$50.00 per week and \$5.00 weekly car allowance—to be under the direct supervision of the President of the Branch; and, to make a written weekly report to the President of the activities of the various shops in respect to how they are working, grievances taken up by him and the shop committee, their settlement or otherwise, to cover each shop meeting of the respective shops and give them reports of educational value in the trade movement in general and hosjery in particular.

I suggest the following districts and the shops they should contain. From personal contacts I know these districts could be covered by one man, always, of course, with co-operation and advice from the President and Vice-President. There will be plenty of work to keep a man busy.

1st DISTRICT—A

Shop	Employees
1. H. C. Aberle ..	900
2. Alex ..	35
3. Brooks & Anderson ..	70
4. Brownhill & Kramer ..	300
5. Danita ..	275
6. Jolly ..	25
7. Interstate—H. and Lycoming Sts.	207
8. Westmoreland ..	700

Shop	Employees
9. Integrity	46
10. Richardson	18
11. Arlington	56
12. Sutro	220
Total	2852

2nd DISTRICT—B

1. Apex	2300
2. Co-Ed	152
3. Dueille	181
4. Opal	106
5. Tabor	170
6. Martha	48
7. Bamback	15
8. Deal	76
9. Diana	107
10. Fahrback	22
Total	3177

3rd DISTRICT—C

1. Gotham	1050
2. Courtland	650
3. Cambria	85
4. Gold Crest	100
5. Gray Dot	13
6. LaSalle—Endurance	85
7. Fox Chase	253
8. Woodland	50
9. Rockledge	52
10. Sunrise	65

Shop	Employees
11. Tackawanna	61
Total	2464

4th DISTRICT--D

1. Arterraft	650
2. Collins	50
3. Daintyfoot	50
4. Concordia	320
5. Federal	150
6. International	33
7. Marnet	150
8. Penn Rose	82
9. Park	16
10. Schuster	116
11. Ruby Ring	250
12. Superior	110
13. Dragon	56
14. Fashionmaid	116
15. VanKirk	110
16. Woehr & Thomas	30
17. Venus	48
Total	2337

5th DISTRICT—E

1. Roxboro Hos. Co. (3 shops) 2nd and Boulevard Palethorpe and Hunting- don I and Ontario	725
2. Quaker	625
3. Rodgers	219
4. Robinson	450
5. Strahan	109

Shop	Employees
6. Whitehall	308
7. Triangle	28
8. Minisac	107
9. Nickels & Lauber	134
10. O. K. Hosiery Co.	104
11. Lafayette	35
12. Haines	16
Total	2860

6th DISTRICT—F

Commercial Finishing Shops

1. Allegheny Finishing Co.	60
2. Ardlin Finishing Co.	5
3. Bailey Dye Works	60
4. Barsol Hosiery Finishing Co.	54
5. Chapman Dye House	2
6. Clover Finishing Co.	29
7. Colonial Finishing Company	100
8. Christos Dye Works	17
9. D. & M. Finishing Company	104
10. Dickerson Finishing Company	6
11. Keystone Dyeing Company	13
12. Lee Dye & Finishing Company	105
13. McCaulley Dyeing & Finishing Co.	57
14. Precision Finishing Company	4
15. Ray Finishing Company	12
16. Thomas Sager Finishing Company	60
17. Schneider Dye Works	77
18. Superior Finishing Company	23
19. Sylvania Dye Company	12

Shop	Employees
26. Triplewear Hosiery Dye. & Fin.	141
21. Universal Hosiery Finishing Co.	60
Total	1001

Next I suggest that the Local move their offices from the Sourth Street Hall to some place in the vicinity of Torresdale Avenue—more to the heart of the hosiery industry. The Union office has outgrown the space allotted to it. Girls fall over each other. Space for everyone is cramped. The officers have no room to meet committees from time to time. As one who has been in scores of offices, there is and can be no way to run an effiecient office in an over-crowded hall such as this one. Of course, the model idea would be a new hall, big enough to house 15,000 members, representing 93 shops, but until members become new-hall conscious, I don't think the Local can afford to go on doing business in an over-crowded office. I urge a committee to be appointed to secure another location for the Local offices.

I think with the ninety-three shops having meetings from time to time it is not fair that any shop be on anything but an equal basis. I think the Union Hall should only be used for shops that have not as yet a shop treasury. After that, each shop using a Local meeting room should rotate with other shops so that all may share equally in the free use of the Union Hall. This will make the members realize the

value of permanent headquarters, large enough to house all.

I suggest the Vice-President of the Local should be assigned the duties of preparing cases to go before the Impartial Chairman. Also to cooperate and assist District Stewards wherever possible; co-operate with the President in carrying out the policies of the Local and act in the capacity of the President in his absence.

The President should have complete charge of all organization work; co-operate with the Vice-President wherever possible in presenting Impartial Chairman cases; see that the National Agreement is enforced; have complete jurisdiction over the District Stewards; take charge of the Local's legal questions; spend as much time as possible in furthering C. I. O. advancement in Philadelphia; and in general, keep track of conditions and trends in the hosiery industry for the benefit of the membership.

The Tuesday night Executive Board meeting should be open to all members that want to listen without voicing or voting their opinions.

Grievances which take up most of the Board's time should and could be eliminated in the following manner:

(1) I suggest that under a District Steward set up most of these grievances could be taken up and settled with shop committees and the district steward, and he in turn could notify the President or Vice-President of the grievance, who would file for an Impartial Chairman hearing without taking up the time of the Board.

All other grievances to be acted on at a regular meeting.

The Board should function promptly at 8:15 P. M. sharp and adjourn at 11:00 P. M. This can be done! A wide-awake and intelligent Board would function in this manner.

I believe regular Local Union meetings should be held each Saturday morning. BECAUSE we should strive to promote educational and social activities, athletic promotion, political interests, and the study of economic problems.

We will be faced with an economic situation for some time: While we can force local companies to sign labor contracts we must always be wise in the amount of increase wages we ask for as long as there are a number of employers out of our range throughout the country.

More union reasoning and work has to be done along the line of promoting industry agreements, policies, and bargaining than on the line of shop by shop agreements. We are trying to develop this system by attempting to secure a merger of the former Northern Non-Union Group of Manufacturers along with the so-called Haines group, so that we have by far, a larger representative group to deal with when the National Agreement runs out in September, 1938.

We must carefully watch the A. F. of L. vs. C. I. O. war, which, while unfortunate from many angles to the deep thinker, I feel sure it will reveal to some extent, that it has helped to organize thousands of members. Just like

every other fight, it keeps the organization spirit of both C. I. O. and A. F. of L. at a high pitch, letting neither side let down for one minute for fear the group may disappear and be absorbed by the victorious side. So, I do not fear this fight in the long run as ultimately peace must come; and when it does between the two groups, perhaps, while some leaders may suffer set-backs, surely the rank and file of the labor movement will be stronger by far than if the fight had never taken place. After a two-year struggle between the A. F. of L. and the C. I. O., we find A. F. of L. increased their membership from three to four million and the C. I. O. from scratch to four and one-half million. Those figures explain labor's gain because this fight, more than anything else, has made the Labor Class organization conscious.

Locally we must continue to do our share in the C. I. O., for like every other community we are affected by wages and conditions in surrounding industries. In Philadelphia the Hosiery Workers Union with their fifteen thousand members are looked upon as the strongest local union in the city and state.

Now to a little more personal atmosphere. Many members no doubt have wondered why I have accepted a post in Mayor Wilson's cabinet as Assistant Director of Public Welfare of Philadelphia. A natural question and one that should be answered. One of the greatest reasons, if not the greatest, for the complete organization of the hosiery industry in the past year has been the political affiliations, political

prestige and contacts that I have built up throughout the city for our Union through political activity. First, in my whole-hearted support as the lone Labor Leader in Philadelphia to back Wilson when he ran for Mayor, and no truer liberal has ever headed a city administration than Mayor Wilson. My active campaign last year as a candidate for congress on a Farmer-Labor ticket, where I received more than 10,000 votes in the 5th district on a split ticket! My active support of President Roosevelt at all times, and in the past election stumping for and supporting the Democratic candidates in Philadelphia and backing the sitting judges.

These three years of active participation have had their effect on both major parties. Both parties have offered me jobs at different times. I have turned down all opportunities; as I refuse to pledge myself to be either a Democrat or a Republican. I will follow and support a liberal man or a liberal party. Now with a strike of capital on against Congress, with business in general receding rapidly; with the hosiery industry hard hit, and especially in Philadelphia, with the C. I. O. and A. F. of L. continuing a fight with each other instead of combining together to fight to get our wage and hour legislation which we need, we have got to use every bit of strategy we can to hold our mills here and keep our people working.

Therefore, a position of a Union official in the Mayor's cabinet in a department so close to the people can not hurt the Union, but on the other hand should place labor in a little more inti-

mate position to take advantage of current opportunities that will benefit your industry.

The titles or jobs that your President now holds are, President of your Union, President of the Philadelphia C.I.O., Member of Mayor Wilson's City Financial Advisory Committee, Chairman of Mayor's Labor Board, and Assistant Director of Public Welfare of Philadelphia.

Since accepting this last position I have had reaction on the following criticism. Leader holds two jobs. Leader is running out on the hosiery workers.

From the above you can see I don't hold two jobs. I hold five. The one source of worry of those who criticize seems to be that the last one carries a salary! My intentions on this are as I explained to the members at the shop meetings and the Union meetings. I will collect one salary, the same amount I get from the Union. I will collect this from the City. If my City salary is not equal to my Union salary, I will take the difference from the Union along with my expenses on both jobs. Under this system I will be able, I estimate, to turn back to the Union each week one half or more of my Union salary to be used to further the organization work we need.

This perhaps is the first time that a labor leader will relinquish salary on a set-up of this kind, but I am always glad to set a precedent where a Union benefits. Of course, I hope all the members understand there is no salary at-

tached to the job of President of the C. I. O., Chairman of the Mayor's Labor Board, or Member of the City Finance Committee, just a lot of hard work.

I am not accepting this position for personal reasons and will only serve as a representative of organized labor. I have always believed that it was necessary for labor representatives to become part of local, state and national affairs.

The Welfare Department was set up for the working class and consequently it offered the best possibilities for a labor leader to serve his people in local government.

My first and only duty is to the labor movement, and if my duties in the Welfare Department in any way interfere with my labor activities, I will, of course, resign my city post.

My only obligations are to my fellow-trade unionists and my actions will at all times be governed by them. No individual or political group on the outside will ever halt me in fighting for the interests of the labor movement.

I stand finally on this promise. At any time, on the demand of the membership, if they feel the Union is not the one that is gaining by my activities on their behalf, to resign from one or all jobs.

And now a few words on the immediate future for your industry of hosiery in Philadelphia. Many mills are striving at the bit, trying to find a way to get out of Philadelphia. Your Union is the only thing holding them here. Keep your

Union strong. Keep it united. Function as one Union, or inside of a year you won't have ten shops left here. Insist your officers at all times paint a clear picture of facts to you. Insist they take the responsibility at all times of suggesting to you your next move to hold your trade here, for an officer is always in a better position to advise than a worker in a mill. Elect officers you have confidence in and then give them the confidence necessary to stand up at all times with the feeling they have it. That, members, is your only hope in the next year to hold your industry here. No one can predict how far this business recession is going. Hosiery, I do know, is being sold and will be sold in the next year in millions of dozens. You must see that you get your share of work.

That job is going to be one of the grave responsibilities of your elected officers of 1938.

These are my reactions, after a hectic year of terrific strain on all of us, as to the best and most practical way to get the best ability out of all of us, individually and collectively, for the coming year with the least cost to the membership, with the elimination of the temporary assessment as the important aim, and yet, without at any time losing sight of the fact that we, who are the active heads of a Union with the livelihood of fifteen thousand members and their families, as our responsibility.

I sincerely ask the combined membership of Branch 1, whom I hope will each receive a copy of this outline, to receive and ponder and act

on these statements in as serious a frame of mind as I have presented them to you.

Fraternally yours,

Wm. M. Leader.
President.

Full Fashioned Hosiery Workers Union,
Branch 1, Philadelphia.")

(A copy of Exhibit P-20 follows:

Exhibit P-20

"Buy, sell, exchange, import and export all articles of value

Philadelphia, Pa., May 7, 1937

M Full Fashioned Hosiery Workers Union
2530 N. 4th Street Phila., Pa.

Debtor to
WEIL'S CURIOSITY SHOP

Benjamin Weil, Proprietor
20 South Second Street

Warehouses--9 and 12 Strawberry Street
Bell Phone, Lombard 4420 13 Entire Floors
and 3 Basements

"At The Sign Of The
Old Spinning Wheel"

"Spin Around and See U;" Terms: Net Cash
ANTIQUES, Andirons, Boat Supplies, Bi-
noculars, Cameras and Lenses, Motion Picture
Machines and Films, Carpets and Rugs, whole-
sale and retail; Check Writers and Adding Ma-

chines, Musical Instruments, Victrolas, Disc and Cylinder Records, Radio Receiving and Transmitting Sets, Curios, Revolvers, Rifles, Guns, all makes, Spark Guards and Fire Sets, Household Furniture, Trunks, Traveling Bags, Typewriters, Tents and Tarpaulins, all sizes, Sporting Goods, all kinds, Flags, all sizes.

200 Cots	@	2.50	500.00
200 Pillows	@	.50	100.00
406 Blankets	@	1.00	406.00
			1,006.00

(CORRECTED BILL)

Paid

Check #
#1556")

MR. HIRSCH:

Mildred Kelly.

Pardon me, may I make a note of record at this time, Judge Kirkpatrick, to be incorporated with my other objections? A further objection to the admissibility of the excerpt from the agreement is the fact that the agreement as to which Mr. Katz made an offer of an excerpt, which was to become effective—when, August 31st, 1938?

MR. SYME:

That is right.

MR. KATZ:

That is right.

MR. HIRSCH:

—was an agreement between the Full Fashioned Hosiery Manufacturers of America, Inc.,

a corporation organized under the membership corporation law of the State of New York, and the American Federation of Hosiery Workers, an unincorporated membership association, which is the national union.—

THE COURT:

Yes, I understand.

MR. HIRSCH:

—and the local branch is not a party to it.

MR. SYME:

Oh,—

MR. HIRSCH:

By name.

THE COURT:

All right.

MR. KATZ:

May I state, then, for the record—

MR. HIRSCH:

I am just adding that as a further—

MR. KATZ:

May I state for the record that we will file a written application and set forth all the pertinent facts thereto in order to make out a case under Section 3 of the Act.

THE COURT:

Yes.

MR. HIRSCH:

I offer in evidence as Plaintiff's Exhibit 26, a letter agreement dated July 29, 1937, between the Apex Hosiery Company and the American Federation of Hosiery Workers, Branch 1, Lo-

cal No. 706, as it may relate to any questions that arises under this provision that has been offered by Mr. Katz,—

THE COURT:

Very well.

MR. HIRSCH:

—in connection with the agreement.

(Letter dated July 29, 1937, from American Federation of Hosiery Workers, Branch No. 1, Local No. 706, to Apex Hosiery Company was marked Exhibit P-26. A copy thereof follows:

Exhibit P-26

"July 29, 1937.

APEX HOISIERY COMPANY
5th & Luzerne Streets
Philadelphia, Pennsylvania

This is to confirm our understanding that the terms and conditions of the Agreement entered into simultaneously herewith on July 29, 1937, by and between APEX HOISIERY COMPANY and AMERICAN FEDERATION OF HOISIERY WORKERS, including Branch No. 1, Local 706, shall not be construed to waive or prejudice in any way the claim for damages of the APEX HOISIERY COMPANY now pending in the District Court for the Eastern District of Pennsylvania, as of March Term, 1937, No. 19950, or that the APEX HOISIERY COMPANY, its successors or assigns may subsequently institute in the Pennsylvania State Courts, against the AMERICAN FEDERATION OF HOISIERY WORKERS, Branch No.

Local No. 706, its Officers and Members as such and/or individually.

Nothing herein contained shall be construed as an admission of liability on our part in the above suit or in any other suit that may be instituted by the APEX HOSIERY COMPANY, but on the contrary, we specifically deny any liability to the APEX HOSIERY COMPANY for damages alleged to have been suffered by it.

AMERICAN FEDERATION
OF HOSIERY WORKERS,
Branch No. 1, Local No. 706

By s William Leader
President

s Joseph Burge
Vice President

WITNESSES:

s Sylvan H. Hirsch
s M. Herbert Syme")

MILDRED KELLY, having been duly sworn, was examined and testified as follows:

Direct Examination.

BY MR. HIRSCH:

Q. Miss Kelly, you were formerly an employee of the American Federation of Hosiery Workers, Branch 1?

A. Yes.

Q. In what capacity?

A. Well, I took care of the records there. I didn't have any official title.

Q. Were you a stenographer—

A. No.

Q. —or a typist?

A. I was a typist.

Q. And are you still employed by the union?

A. No.

Q. You were subpoenaed by me to appear here today, were you not?

A. Yes.

Q. When did you leave the union, the union's employ?

A. In October, '37.

Q. I show you a letter dated June 24, 1937, which has been marked for identification as Plaintiff's Exhibit number 24, and ask if the initials in the lower left-hand corner "mk" signify your initials.

(The witness examined the letter.)

A. Yes, they do.

BY MR. HIRSCH:

Q. Was there any other stenographer in the employ of the union at that time with the initials of mk?

A. No, I don't think so.

Q. And will you take a look at that letter and tell us whether or not you typed the letter that is before you, or if it was done in a number of copies of the same letter, whether you typed the original?

A. Well, I would have typed the original draft of the letter, I know, but I may have given it out,

there were several copies to be made up, I may have given it out to a couple of the girls.

Q. Would that be the type letter—

A. But I may have typed that all alone, I don't know.

Q. Would that be the type letter that would be made up in more than one copy, as far as you recollect?

A. Yes.

Q. And at that time, in June of 1937, were there notices prepared for shops to appear at the Apex, for other shops to appear at the Apex and picket, such as the one before you?

A. Oh, I don't know.

Q. But you prepared that one?

A. Yes. Well, it is my initials.

Q. Yes.

A. So I prepared the original.

THE COURT:

May I see it, Miss Kelly?

BY MR. HIRSCH:

Q. Now, there appears the signature of William Leader. Who signed that?

A. I did.

Q. That is your signature for him?

A. Yes.

Q. I show you a card that has been marked Plaintiff's Exhibit number 25 for identification, and ask you who prepared the signature of William Leader on that.

(The witness examined the card.)

A. I did.

BY MR. HIRSCH:

Q. You did?

A. Yes.

Q. Now, will you tell us under what circumstances that letter was prepared? Oh, first, was that letter prepared and delivered, as far as you know?

A. Yes. It wouldn't have been mailed out, it would have been given to someone in the office, I think, to take out.

Q. And will you tell us the circumstances under which that letter was prepared, as far as you can recollect?

A. Well, I don't know for certain, but these letters that were to be sent out to one shop, someone would come in and ask me to make up a—

Q. Who would come in?

A. Well, that I don't know, it might be the shop chairman or one of the shop committee.

Q. The shop chairman of the shop to which this notice was to be sent,—

A. Yes.

Q. —or a member of the shop committee in that shop to which this notice was to be sent?

A. Yes.

Q. And what would happen, he would come in—

A. He would come in.

Q. —to headquarters?

A. Yes, and ask me to make up eight copies, or twelve copies, according to the number of people in the shop. I think these notices were posted in the shop.

Q. And under what circumstances then would you sign William Leader's name?

A. Well, ordinarily Mr. Leader would have to

O. K. it, but I would say during those days if Mr. Leader didn't come into the office, if he wasn't coming in, and if a chairman would come in and ask me to type up a letter like this and sign his name, Mr. Leader wasn't there, I would ask him if it was all right with Mr. Leader.

Q. And—

A. And if he said yes, I would take his word for it.

Q. So that your signature of William Leader's name was either with his—at his direction or with his consent, or at the direction of the shop chairman of the shop to which this notice was to be sent, who would first tell you that Leader said it was all right.

A. I think that's—

Q. Now, the shop chairmen of the various shops did come into headquarters during that time, did they not?

A. Yes.

Q. And that is the official letterhead of the union?

A. Yes.

Q. And was prepared at union headquarters?

A. Yes.

Q. And they were located where?

A. 2530 North Fourth Street.

Q. And there was a regular office maintained there with a staff, was there not?

A. Yes.

Q. How many girls were on the staff?

A. I think there were five others at that time, besides myself.

MR. HIRSCH:

That is all; gross examine, I want to offer

this letter in evidence at this time. It has already been marked for identification, and I now offer it as Plaintiff's Exhibit number 24, and I also offer it in evidence Plaintiff's Exhibit number 25.

BY MR. HIRSCH:

Q. By the way, in order that the record may indicate, there is a writing on here, "The above signatures were written by me, Mildred G. Kelly." You just put that on when you were shown the letter the other day, didn't you?

A. Yes.

MR. HIRSCH:

And for the purposes of the record we may consider this as if it were not in the letter.

(A copy of Exhibit P-24 follows:

Exhibit P-24

"Bell Phones: Regent 2440

Regent 2441

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

Branch No. 1, A. F. of H. W.

Affiliated with American Federation of Labor
as Local 706, U. T. W. of A.

Meetings Rooms and Offices,

2530 N. Fourth Street

WILLIAM LEADER JOSEPH P. BURGE
President 1st Vice President

PHILADELPHIA, June 24, 1937.

SPECIAL NOTICE

ATTENTION:
EMPLOYEES OF THE ARTCRAFT SHOP:

You are hereby notified to picket the Apex Shop both before and after work on Tuesday, June 29, 1937.

You will continue to picket this Shop on the same day (Tuesday) of every week until further notice.

Fraternally yours,

/s/ Wm. Leader.
President

/s/ Joseph Burge
Vice-President

FULL FASHIONED
HOSIERY WORKERS
Local 706 Branch One

Wlmk
Stbau
18049

(notation in ink)

The above signatures were written by me
Mildred G. Kelly")

(A copy of Exhibit P-25 follows:

Exhibit P-25

"(THIS SIDE OF CARD IS FOR ADDRESS)

Wm. Meyer, Jr.
6th and Chelten Ave.
City

Phila. May 21, 1937

Greetings:

The Apex Strike is more than 2 weeks old. While the whole industry has been breathlessly watching you, and workers everywhere have been heartened by your splendid courage, the Apex Company has sent out 'feelers' for a settlement, and, at the same time, has been trying all kinds of schemes to break the strike.

We are calling a meeting of the Apex workers for Tuesday evening, May 25, at the Labor Lyceum, 2nd & Cambria, at 8:30 o'clock, to give you a detailed report of the entire situation.

Wm. Leader
President CIO

Tune-in WIP Monday, May 24, 10:30 p. m.

Wm. Leader will talk about the strike situations.")

Cross Examination

BY MR. SYME:

Q. Miss Kelly, you were asked by Mr. Hirsch whether you signed this letter for Mr. Leader. Did you show this letter to Mr. Leader beforehand?

A. Well—I don't know that. I said that ordinarily it was the custom for Mr. Leader to O. K., I mean—

Q. Did he O. K. this particular letter?

A. Oh, ho, I don't know whether he did or not.

Q. Did you put it on his desk for his O. K.?

A. No.

Q. You did not?

A. I don't think so. I wouldn't have put it on his desk to wait for him because they went out, I imagine with letters of that type, they would have gone out right away, the man would be waiting for them.

BY THE COURT:

Q. Well, I understand that what you mean is that you don't remember anything about it, but that if he was present you would have asked him,—

A. Yes,

Q. —and if he was not, you would not have?

A. No, I couldn't have.

BY MR. SYME:

Q. Miss Kelly, was it a general custom, so far as you remember, to send out letters by the union to other shops to ask them to picket the Apex shop?

A. Well, I don't think it was a general custom, but I don't know, I don't remember.

Q. I show you this letter. Is that Mr. Leader's signature?

(The witness examined the letter.)

A. Just one minute,—

(The letter was shown to Mr. Hirsch.)

BY MR. SYME:

Q. You weren't Mr. Leader's private secretary, were you?

A. No.

Q. Who was Mr. Leader's private secretary?

A. At that time it was either Miss McCourt or Miss Rau.

Q. Either Miss McCourt—

A. Yes.

Q. —or Miss Rau?

A. I don't know just when Miss Rau started in.

Q. You didn't have any personal correspondence for Mr. Leader?

A. No.

Q. You were just one of the stenographers in the office, is that right?

A. Well, I wasn't a stenographer, really.

Q. What were you, Miss Kelly?

A. Well, I was a typist and I took care of the records.

Q. You have read this letter, have you?

A. No, I didn't read it.

Q. Would you mind reading it?

THE COURT:

Is this another letter?

MR. SYME:

That is another letter.

THE COURT:

Well, I better see what it is. All right.

BY MR. SYME:

Q. Do you have any knowledge of this letter Miss Kelly?

A. No.

MR. SYME:

All right, thank you, that is all.

J. ALLEN HARPER, recalled.

Direct Examination

BY MR. HIRSCH:

Q. Were you in court, Mr. Harper, when Mr. Etter testified the other day?

A. I was.

Q. And did you hear him testify that you never showed him the damage to the door in the basement, or the broken door to the roof, or any other damage except a broken window pane in the yard?

A. I did.

Q. Now, you related in your direct examination a few days back the damage which you did find on the property. Did you ever show Etter any of that damage?

A. Oh, yes.

Q. Did you ever show him the damage to the door leading to the roof?

A. Yes indeed.

Q. How?

A. Took him up there. We were up on the roof. That door was broke off at three different times, and the last time they tore the casing and everything off.

Q. And what did you do with Etter about it?

A. Well, we just went up.

Q. Showed it to him?

A. Yes, reported it to him.

Q. What about the damage to the door in the basement? What door was that?

A. They broke the lock off of a cage door going into the electrical department. That was the night of May 6th.

THE COURT:

I thought the testimony on damages had been postponed.

MR. HIRSCH:

Well, I am only rebutting on Etter's testimony,—

THE COURT:

Oh,—

MR. HIRSCH:

—as to what was shown—

THE COURT:

—it isn't worth while. It isn't worth spending time on. The question of damages has been referred.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. Now, then, what happened that particular day when you were in the basement with regard to the damage to the door to the cage? Who else was with you?

A. Two police, the sergeant and the acting captain.

Q. And who else?

A. Well, there was about eight of our own fellows.

Q. Was Etter there?

A. Yes, William Etter was there.

Q. Now, what happened on that particular day?

A. Well,—

Q. Of an unusual nature.

A. I had the police down there with Etter to show them that the tools—these drawers were broken open and the tools were taken out of them. Etter took ahold of the drawer there—first, he claimed there was no drawers broken open there, and then finally he took ahold of the drawer, the handle of the drawer, with a handkerchief, and pulled the drawer open, and the officer looked at him and he says, "You are pretty smart, aren't you?"

Q. What did Etter say?

A. Well, Etter didn't reply to anything, but they showed him that all the drawers were broken open, because we opened every drawer to show it to him. He just took ahold of them and pulled them out.

MR. HIRSCH:

I have another line of examination. May I see Your Honor at side bar.—

THE COURT:

Very well.

MR. HIRSCH:

—so I may have a ruling on it before I go into it!

(Discussion at side bar.)

MR. HIRSCH:

That is all, Mr. Harper.

WILLIAM MEYER, recalled.

Direct Examination

BY MR. HIRSCH:

Q. Mr. Meyer, were you present in court when Mr. Leader took the stand the other day and testified?

A. Yes, sir.

Q. He testified to the effect that after he came on your property you invited him into your office to discuss an agreement. Did you or did you not invite him into your office to discuss an agreement?

A. No, I did not.

Q. Did you invite him into your office at all?

A. Only when I made that remark to have somebody come in and stop the—the terrible condition, and Mr. Leader then came in through the office way.

Q. And he testified that when he came in you extended your hand and gave him a hearty greeting. Is that or is that not a fact?

A. Not to my knowledge.

Q. And he testified, Mr. Meyer, that you requested him to have the union supply cots, blankets and food for these sit-downers because you didn't want them sleeping on the tables. Did you or did you not make that request?

A. Of course not.

Q. Did you request Mr. Leader to get up on a table and make a speech?

A. No.

Q. Mr. Etter testified that when he met you that day he said, "This is the first opportunity I have had to meet you." What in fact did he say to you that day when he met you?

A. He tried to impress me that he was shop chairman around there, I think he remarked that several times, in fact, he—I noticed that he crowded himself in front of me several times. He said, "I am in charge here, I am the shop chairman." That is about the extent of his conversation.

Q. Now, will you tell us something about the physical layout of the factory? Are there any other factories next, immediately adjacent, to your factory as far as the party-wall is concerned which would permit any person to get on to your roof from another building not owned by your company?

MR. SYME:

I object to anything with respect to any building being adjacent to us. I don't see the relevancy of it, Your Honor.

THE COURT:

I overrule the objection.

THE WITNESS:

Shall I answer?

MR. HIRSCH:

Yes.

A. No, there is no factories there at all.

BY MR. HIRSCH:

Q. Your building is bounded on three streets, is it not?

A. That is right.

Q. And on the fourth side what bounds it?

A. There is a hardware store.

Q. And what is the height of the—

A. And there is an alleyway between that, and the height of that store, I think, is three stories high.

Q. And how high is your factory at that point?

A. Six stories.

Q. So that there is no building next to your factory on any side which would permit anyone to come from that building over to the roof of your building?

A. No, they couldn't do it.

MR. HIRSCH:

That is all.

Cross Examination

BY MR. SYME:

Q. Mr. Meyer, there was a rain on May 6th, as far as you remember?

A. Why, I would say this, when I came in from —which was about around quarter after two—

Q. No, I don't mean at that time.

A. Well, it was threatening.

Q. I mean around four-thirty.

A. It was threatening, but whether it was raining—

BY THE COURT:

Q. No, around four-thirty did it rain? Do you remember that?

A. I don't remember that.

BY MR. SYME:

Q. What time did you leave the plant, Mr. Meyer?

A. I left the plant about six o'clock. I wouldn't recall whether it rained or not.

Q. Did you ask Mr. Leader to address the crowd?

A. I asked Mr. Leader to quiet the crowd.

Q. You did ask him to do that?

A. I did that.

MR. SYME:

That is all.

Redirect Examination

BY MR. HIRSCH:

Q. And why did you ask him to quiet the crowd?

A. Because his was the voice that I heard immediately outside which ordered a strike and a sit-down, and then when they said, "Get Mr. Leader", when I called for what you might say help to stop this situation, then when Mr. Leader came I asked him, "For goodness sake, please quiet the thing down", and from the moment that Mr. Leader stepped into the factory things quieted down immediately, and people started to clean up the wreckage, to make room, so they could get through it.

Q. Did anyone else other than Mr. Leader appear to be in charge of that group?

A. Outside of Mr. Etter kept telling me that he—he had been elected shop chairman. He kept saying that right along. I don't know whether he wanted to take the honors away from Mr. Leader, or vice versa, I don't know.

MR. HIRSCH:

That is all thank you.

(The following occurred out of the hearing
of the jury:

MR. HIRSCH:

Let me make the offer. With the agreement of counsel for the defendants the record may note the fact that the membership cards and records of the union as examined by Mr. Mulcahy, the representative of David Bachman, the Special Master appointed by this Court, indicated the following eight persons who were the only employees of the Apex Hosiery Mill who prior to May 6th, 1937 were duly noted on the books and records of the union as being members of the union:

Clifford H. Ferber, Betty Adams (now Weger), L. Geoghegan, J. Gladén, E. Morris, Charles Lehall, Ella Schultz (now Schubert), Peter Wolfert.)

MR. HIRSCH:

Plaintiff rests at this time on the question of liability.

THE COURT:

Well, now, gentlemen, do I understand that both sides have now produced all the evidence which they have relating to the issue of liability, and, in fact, all the evidence on every point except the measure and extent of the damages, and that both sides rest their case—

MR. SYME:

Your Honor,—

THE COURT:

—to that extent?

MR. SYME:

—I don't want to interrupt you, I would like to put on just one witness, a girl in the office, with respect to a letter. It will take me just a minute.

THE COURT:

All right.

MR. SYME:

Miss McCourt—or, Miss Rau, rather.

MR. HIRSCH:

May I see Your Honor at side bar with Mr. Syme?

(Discussion at side bar.)

Defendants' Evidence Surrebuttal

ELSIE RAU; having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Miss Rau, are you Mr. Leader's private secretary?

A. I am.

Q. And on June 28th were you Mr. Leader's private secretary?

A. Yes, I was.

Q. What do your duties as his private secretary consist of, very briefly?

A. Take all letters dictated by him, and all committees, under his direction.

Q. Miss Rau, I show you this letter of June 24th. It has been marked as one of the plaintiff's exhibits. Do you remember that letter?

(Exhibit P-24 was shown to the witness.)

BY MR. SYME:

Q. Do you remember that letter?

A. No, I don't.

Q. Miss Rau, I show you this letter. At the bottom of the page you see the initials "eR". Are they your initials?

(A letter was shown to the witness.)

A. Yes, they are.

BY MR. SYME:

Q. And you remember taking this letter?

A. Yes, I do.

Q. Did Mr. Leader dictate this letter to you personally?

A. Yes, he did.

Q. Do you remember the circumstances surrounding this letter? Why did Mr. Leader give you this letter?

A. The letter was sent out previously to this and it was called to my attention later that it should not have been sent out, and that Mr. Leader had not dictated it and didn't authorize any such

letter to go out. He became very angry about it, and dictated this correction letter to me.

Q. And you—

A. He insisted that his personal signature go on it.

Q. And is that Mr. Leader's personal signature?

A. Yes, that is.

Q. You know Mr. Leader's personal signature?

A. Yes.

MR. SYME:

All right. Mark this for identification. Cross-examine.

(Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman" was marked for identification Exhibit D-9.)

MR. HIRSCH:

May I see that, please?

BY MR. SYME:

Q. I just want to ask one question. Miss Rau, the date on the top of this is June 28th, and here you have July 24th. Look at that.

A. I believe that should be June 24th.

Q. June 24th.

MR. SYME:

Will you object to this being offered in evidence?

(The letter was shown to Mr. Hirsh.)

BY MR. SYME:

Q. Will you read this letter? Read it out loud.

MR. HIRSCH:

That is objected to.

THE COURT:

Well, it goes directly to the letter you offered.
It is all right.

MR. SYME:

That is right.

THE COURT:

I will overrule the objection.

BY MR. SYME:

Q. Will you read the letter out loud, Miss Rau.

A. "Greetings?". This is to all shop chairmen.

"Through a misunderstanding in our office, a special notice was sent out dated July 24, 1937 as follows:

'TO ALL EMPLOYEES OF THE SHOP:

"You are hereby notified that you are to picket the Apex Hosiery Company both before and after work on

"You will continue to picket this shop on the same day () of every week until further notice."

Fraternally yours,"

Signed, William Leader and Joseph Burge.

"We wish to inform our members that at no time does the Union order you to picket the Apex Hosiery Company or any other plant. All picketing by our membership is done voluntarily and a question of picketing by shops is always discussed at the shop meetings."

"In all strikes members have the legal right to peacefully picket and we know that they will continue to exercise that right unless forbidden to do so by law. Strikes, as we all know, are won by peaceful picketing.

"Again let me emphasize, at no time does the Union order anyone to picket anywhere." —that is underlined.

Signed, Fraternally yours, William Leader, President, Full Fashioned Hosiery Workers; Joseph Burge, Vice-President.

Q. I show you a list of shops that was attached to this letter. Are they the shops to which this letter was sent?

A. Yes, it was.

MR. SYME:

I offer the letter and the attached list in evidence, Your Honor, as a defendants' exhibit.

MR. HIRSCH:

Objected to for the purpose of the record.

THE COURT:

Overruled.

(Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman," and attached list, was marked Exhibit D 9. A copy thereof follows:

Exhibit D-9

"Bell Phonés: Regent 2440

Regent 2441

**FULL FASHIONED HOSEERY WORKERS
UNION OF PHILADELPHIA AND
VICINITY.**

Branch No. 1, A. F. of H. W. June 28, 1937

Affiliated with American Federation of Labor
as Local 706, U. T. W. of A.

Meeting Rooms and Offices,
2530 N. Fourth Street

WILLIAM LEADER JOSEPH P. BURGE
President 1st Vice President

SPECIAL NOTICE

PHILADELPHIA, June 28, 1937

Greetings:

ATTENTION ALL SHOP CHAIRMAN

Through a misunderstanding in our office,
a special notice was sent out dated July 24,
1937 as follows:

TO ALL EMPLOYEES OF THE —— SHOP:

You are hereby notified that you are to picket
the Apex Hosiery Company both before and
after work on ——————

You will continue to picket this shop on the

same day () of every week until further notice.'

Fraternally yours,

(Signed) Wm. Leader,
President,

(Signed) Joseph Burge,
Vice-President.

We wish to inform our members that at no time does the Union order you to picket the Apex Hosiery Company or any other plant. All picketing by our membership is done voluntarily and a question of picketing by shops is always discussed at the shop meetings.

In all strikes members have the legal right to peacefully picket and we know that they will continue to exercise that right unless forbidden to do so by law. Strikes, as we all know, are 'won by' peaceful picketing.

Again let me emphasize, *at no time does the Union order anyone to picket anywhere.*

Fraternally yours,

Wm. Leader,
President,
Full Fashioned Hosiery
Workers.

Joseph Burge,
Vice-President.

WL/er

THE ATTACHED NOTICE WAS SENT TO
THE FOLLOWING:

SHOP CHAIRMAN—BRANCH ONE

NAME	ADDRESS	SHOP
Fred Boggs, 3934 N. Franklin St., Lueille		
Steven Boyd, 1855 E. Clementine St., Richardson		
George Brown, 6710 Lynford St., Marnet		
Max Burger, 3411 Tudor St., H. C. Aberle		
T. C. Carey, 415 Knorr St., Fashionmaid		
Charles Carlson, 888 Granite St., Keystone		
Michael Casey, 2939 "D" St., Hancock		
Douglas Clark, 3457 Helen St., Torrerdale		
Stanley Clemm, 334 N. Hancock St., Venus		
Sam Collingsgrue, 4436 N. Reese St., Collins		
Frank Crinlies, 3474 Weikle St., Roxboro		
Leo DeMartin, 6739 N. Carlisle, Roxboro		
Jules Eberhardt, 3177 Cedar St., Deal		
Harry Ernst, 6319 Marsden St., Bailey		
Erwin Fahl, 4911 N. Broad St., Rialto		
Phil Fanning, 2316 Emerald St., Brownhill & Kramer		
Joseph Felix, 4226 Romain St., Quality		
John Fisher, 3224 Magee St., Dragon		
John Gendick, 4820 Garden St., VanKirk		
Marge Given, 3030 N. Swanson St., Roslyn		
Jean Goldi, 7781 Jackson St., Ruby Ring		
Rudolph Hackbart, 3415 "E" St., Martha		
Samuel Heisman, 1910 Clarence St., Schneider		
Gertrude Hilsee, 3331 Jasper St., Barsol		
George Holt, 1706 Brill St., Concordia		
Adam Horger, 4946 N. Smedley St., B & B		
John Hughes, 802 Willard St., Venango		
Monroe Hutzel, 3357 Argyle St., Courtland		

NAME	ADDRESS	SHOP
Margaret Jones, 2538 N. 3rd St., Lee ret.		
(Above name crossed out.)		
James Keenehene, 3434 Emerald St., Schuster		
Marvin Kelly, 7222 Marsden St., Whitehall		
Hugh Kerr, 3010 N. Marshall St., Vogue		
William Kirsch, 4624 Rising Sun Ave., Berger		
Joseph Kline, 2235 E. Ann St., Gotham		
Ernest Kornfeld, 1013 W. Cambria St., Su- perior		
John Kuhns, 1000 Winchester, Rockledge, Robinson		
Louis Lanard, 7160 Glenlock St., Rogers		
Vic LaVelle, 5720 Hegerman St., Realart		
Wm. MacGruther, 1419 Clearfield St., Nickels & Lanber		
Jerry Malloy, 3253 N. 16th St., Gold Seal		
Florence McCarthy, 2815 N. Boudinot St., Clover		
Daniel McEwen, 6145 N. Lawrence St., Quaker		
Bernard McLaughlin, 444 E. Westmoreland St., Colonial		
Terence McManus, 5510 Miriam Rd., Co-Ed		
Alfred Meyers, 2513 Mascher St., Roxboro		
John Mirsch, 4117 N. 6th St., McCaulley		
Walter Moore, 631 E. Levick St., Daintyfoot		
William Morrow, 7717 Ferndale St., Inter- national		
Jack Muller, 2736 N. 91st St., Quaker		
Frank Nagle, 156 W. Tioga St., Crystal		
Sophie Nagle, 156 W. Tioga St., Gotham		
Joseph O'Neill, 4551 Cottman St., Courtland		
Charles Palmer, 3038 N. Warnock St., Gold Seal		

NAME	ADDRESS	SHOP
Walter Pike, 1532 Dyre St., Grey Dot		
Harold Pratt, 3466 N. Hurley St., Tabor		
Frank Reed, 4003 N. Fairhill St., Klearspun		
Edw. Richards, 3449 N. Mascher St., Federal		
David Ritchie, 3149 Weymouth St., Sylvania		
Jules Ryazeleski, 2250 E. Monmonth St., Alex		
Charles Schuster, 264 Carl Mackley Apts., La Salle		
Paul Simmer, 5065 Pennway Ave., Arlington		
John Skbjack, 130 Kram's Ave., Cambria		
Frank Smith, 1504 Womrath St., Opal		
Lillian Sweeney, 1825 E. Lippincott St., D & M		
John Thompson, 5945 N. Belden St., Vogne		
Wm. Turner, 3230 N. Kipp St., Nickels & Lau ber		
Robert Veningo, 4909 Friendship St., Ruby Ring		
Harry Verdier, 303 E. Thayer, Endurance		
Joseph Whitaker, 3740 Frankford Ave., Triple wear		
Frank Wisniewski, 2506 Englewood St., Jolly		
George Wolf, 2736 W. Sternor St., O. K. Shop		
Wm. Zielke, 5400 N. Fairhill St., Rockledge		
Elmer Zschunke, 7342 Torresdale Ave., Mini sae		
Harry Seneider, 2351 Colorado St., Christos		
William Koenig, 4551 "D" Street, Lee Robinson		
Thomas O'Neil, 4051 Aldine St., VanKirk")		

MR. SYME:

That is all, sir.

MR. HIRSCH:

Now, wait, I am not through.

Cross Examination

BY MR. HIRSCH:

Q. Miss Rau, this letter is dated June 28, 1937?

A. Yes.

Q. An injunction was handed down by this Court dated June 22nd, 1937, prohibiting picketing up at the Apex plant in any large numbers, such as would intimidate, coerce or otherwise force membership; was it not?

MR. SYME:

Your Honor, I object to it. First of all, Mr. Hirsch—

THE COURT:

Well, I will sustain the objection. The only thing this young lady has testified to is that this letter was sent out, that is all. She hasn't said anything about the import, or any inferences to be drawn from it. That is not cross-examination.

BY MR. HIRSCH:

Q. Why is it this letter is dated on the typewriter and not on the stencil that was sent?

A. That is because I forgot to put the date in the type on the stencil, and then for our file I put it in so I wouldn't have any trouble later on. It was done at the same time.

Q. You forgot to put the date of this letter on the stencil, and the date which you put in the stencil of July 24, 1937 you say was wrong?

A. That was an error.

Q. Isn't it possible that the date of July 24,

1937 is correct, and the date that you put on there in typing is in error?

A. I doubt it, because I always date my letters as soon as I file them.

Q. Do you have your shorthand minutes with you in court?

A. No, I don't.

Q. Do you retain them for any length of time?

A. I usually do, certain ones.

Q. Do you ever sign William Leader's name for him on any letters?

A. When he is too busy to sign himself and he authorizes me to sign it.

MR. HIRSCH:

That is all.

THE COURT:

Now, is that all, gentlemen?

MR. SYME:

That is all, yes, sir.

THE COURT:

Well, now, then, the Court understands that both sides have rested their case upon the issue of liability and upon all issues except the matter of damages, and that no further evidence will be offered by either party unless the Court determines that it bears upon the issue of damages, which has been referred to the Master. That is correct? Except with this one exception, that if the Court determines that the Act of 1925 is applicable, then whatever testimony necessary to support the plaintiff's motion to dismiss or to suspend may be offered and taken.

MR. SYME:

Defendants' motion; Your Honor,

MR. HIRSCH:

To support defendants' motion.

THE COURT:

Defendants'; yes.

MR. HIRSCH:

You said plaintiff's; and to support the plaintiff's position contrary to the motion.

THE COURT:

Oh, yes, on that issue, I mean, and then only if the Court determines that Act can be applicable under the circumstances.

Well, now, I am going to ask the jury to come back tomorrow morning, as it may be advisable to give them further instructions at that time. Counsel can meet me in chambers to work out the procedure from now on, and we will adjourn, then, until tomorrow morning at ten o'clock. There may be nothing further for you at that time, or there may be some matters to be submitted to you then. We haven't quite worked that out. But you be here at ten o'clock tomorrow morning.

Adjourned until Tuesday, March 21, 1939,
at ten o'clock A. M.

Philadelphia, Pa., March 21, 1939

Seventh Day

THE COURT:

Now, in Apex Hosiery, the Court enters the following order:

NOW, March 20, 1939, David Bachman, Esq., is appointed master under Rule 53 to make and report findings upon the issue of damages sustained by the plaintiff as a result of injury to and destruction of its physical property, plant, machinery, equipment and merchandise, occurring from May 6 to June 23, 1937, inclusive. The Master is instructed to report separately the damages resulting from injury to property occurring on May 6, 1937.

The Master will sit to hear testimony beginning Wednesday, March 22, 1939, and will sit continuously until the testimony is complete, Saturdays and Sundays excluded.

Now, is there any further action necessary, gentlemen?

MR. SYME:

Your Honor, for the purposes of the record I want to make it clear that we do not consent to the reference to the Master, and that we object to it.

MR. HIRSCH:

I think for the purposes of the record it should be made clear that the defendants were the ones who not only approved Your Honor's statement that you would make this order, but

heartily concurred in it, although they did say they could not for purposes of the record agree to it.

THE COURT:

Well, gentlemen,—

MR. SYME:

Your Honor,—

MR. HIRSCH:

Let me finish, please, Mr. Syme."

MR. SYME:

—I am going to ask for the withdrawal of a juror if Mr. Hirsch continues prejudicing the jury with these speeches.

THE COURT:

No, the jury won't pay any attention at all to what counsel are saying now. It is a matter not in your province. It is purely a legal question.

MR. HIRSCH:

And I want it noted that at the time when the discussion of reference to a Master was held I asked that the matter continue before the jury, if you will recall, Judge Kirkpatrick.

THE COURT:

Well, gentlemen,—

MR. HIRSCH:

Now that your order is made I do not file an objection to it,—

THE COURT:

—it is understood—

MR. HIRSCH:

I will acquiesce in it.

THE COURT:

Gentlemen, it is understood that the order is made by the Court of its own motion, without consent of either counsel. It is made in the interest of saving time and expeditiously concluding the testimony in the case. The Court felt that it is very desirable to make use of whatever machinery the law gives us to shorten or to limit the amount of testimony which the jury would have to listen to on this complicated question of physical damage.

It is understood that the order does not include damages alleged to have arisen from loss of profits and during the period when the mill was not operating. That will be heard before the jury when hearings are resumed.

Now, gentlemen, what arrangement shall we make about having the jury come back? Is it agreeable to have the jury notified when the hearings are concluded, or do you want to have a day set and bring them back with the possibility that they may just simply have to be sent away again if the hearings before the Master are not concluded?

MR. HIRSCH:

Subject to your call will be satisfactory to us.

THE COURT:

Is that all right?

MR. SYME:

That is perfectly all right.

THE COURT:

All right, both sides agree that the jury may be allowed to remain subject to the call of the Court.

Now, members of the jury, you see, we have really no idea how long this accounting before the Master is going to take. It may be a matter of only a few days and it may be very much longer than that. I think as a matter of your convenience the best thing to do will be just to leave you subject to call. Both sides have agreed to that method, but I also think it would be a good idea if you would stop before you leave at the Clerk's office, go down there this morning as soon as I let you go, go down to the Clerk's office and give them your telephone number, because that may save some time.

All right, well, the Clerk will be over here in a few minutes. He will take you down to the office and then you can give him that information. Then if you make any change of address before you are called, be sure to notify the Clerk. That applies to the alternate jurors as well as the jurors in the box. Now, suppose you just wait here until the Clerk leaves, and you will, of course, remember the caution that I have given you a number of times during the trial of this case, about not discussing the case with any person or permitting any discussion with you about it.

I think that is all, then.

Let me speak to counsel before we adjourn.
You may take the jury.

Adjourned

Philadelphia, Pa., March 29, 1939

Eighth Day

THE COURT:

Are we ready to proceed?

MR. HIRSCH:

Yes.

Plaintiff's Evidence (Continued)

MR. HIRSCH:

What does Your Honor care to do on the Master's report, now that it has been filed?

THE COURT:

Well, you offer it in evidence and it can be read to the jury at any time.

MR. HIRSCH:

I will offer it in evidence at this time. May I have it, sir? It has been filed with you.

THE COURT:

Yes, I will read it to the jury.

Members of the jury, counsel for the plaintiff has just offered in evidence the report of

Offers in Evidence

the Special Master. You will understand the Special Master was a gentleman appointed by the Court, having no connection with either side in this case, who happened to be one of the referees in bankruptcy, and to whom a number of matters of this kind are referred, and this is his report on the amount of damages in money sustained by the plaintiff. It refers only to the physical damage to the plant and machinery. The other items of damage that the plaintiff claims will be gone into here, but these items of physical damages, were so numerous and complicated that we decided, or I decided, that this was the best way to do it.

He has divided it into two categories here, the purpose of which will appear. First, he has reported the damages which occurred on May 6th, 1937—and you will remember that was the day that the plant was broken into—and, secondly, he has reported the damages from May 7th up to June 23rd, inclusive, which was the day on which the sit-down strike ended, and he has reported them item by item. There aren't a great many, there are only two pages, so that I will read them to you.

The damages which he reports occurred on May 6th are as follows—that is, in money value: I am not reporting separate items here. This represents actual money damage to the plaintiff:

Glazing	\$ 803.73
Plumbing	359.10
Hardware repairs and supplies	659.01

Offers in Evidence

913

Electrical repairs and supplies	\$ 708.73
Painting	98.06
Doors	130.00
Repairs and replacement of fixtures	4,319.54
Replacement of broken tubes for vapor lights	730.35
Repair and replacing of stencilling machine and parcel post scale	135.00
Repairs to multigraph equipment	106.71
Repairs to label pasting machines	135.00
Repair and replacement of sealing machine	90.00
Miscellaneous repair and replacement of mill furniture and equipment	1,106.24
Repair to time recording system	895.00
Repairs to desks, typewriters, adding machines, etc.	1,242.07
Repairs to and replacement of venetian blinds in office and plant	754.00
Repairs to and miscellaneous replacement of office equipment	30.00
Miscellaneous repairs in office and plant	161.83
Additional/miscellaneous damage	125.00
Damage to machinery other than knitting machines	406.00
Miscellaneous labor repairing damage	300.00
Inventory shortage, damaged hosiery, labor costs for sorting ware room merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	4,750.30

Reprocessing of soiled hosiery	\$ 2,528.45
Cost of labor for repairing damage to plant and equipment	5,925.00
making a total of damage which the Master reports as having occurred on May 6th of	\$ 26,490.12

Now, the damage from May 7th to June 23rd, inclusive, consists of:

Doors	\$ 60.00
Knitting machinery—bill of Texile Machine Company	67,818.16
Corrosion and damage to machinery—repairs made by Apex	11,605.09
Repairs to time recording system	699.75
Damage to machinery other than knitting machines	740.44
Repairs to fence	37.50
Inventory shortage, damaged hosiery, labor costs for sorting wareroom merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	527.00
Repairs to roof	47.60
Damaged silk	175.00
Cost of labor for repairing damage to plant and equipment	934.05
making a total damage occurring from May 7th to June 23rd, inclusive, of	\$ 82,644.59

The entire total of damage from May 6th to June 23rd, inclusive, of the physical damage, is \$109,134.71.

MR. HIRSCH:

Does that report now go in evidence as an exhibit, sir?

THE COURT:

Oh, yes, it might as well.

MR. HIRSCH:

May I have it marked, then?

THE COURT:

Yes.

MR. SIMONS:

If Your Honor please, may I enter my objection? May I enter my objection to that being offered in evidence? We objected to the original appointment.

THE COURT:

Yes, all right.

MR. SIMONS:

I enter my objection at this time to having read that matter in evidence.

THE COURT:

Yes; I will overrule that.

MR. SIMONS:

There are a large number of items here, and I don't want to enter objections that we may have had to a number of them, but I do want to direct the Court's attention particularly to an objection on the matter of the knitting machines and repairs to the knitting machines amounting approximately to an item of the Textile Machine Company of \$67,818., and

also of repairs by the Apex Company of \$11,605.

THE COURT:

Yes.

MR. SIMONS:

I objected at the time that the offer was made, and also at the time that the Master made his findings, which matters were of course, not of record. The Master granted the entire claim, granted the amount as claimed. He did not take into consideration at all at the time of this claim the fact that there was a certain amount of obsolescence and depreciation of the machinery. In other words, the testimony as presented indicated that there had been an order for some fifty-one machines—

MR. HIRSCH:

Now, I am going to object to Mr. Simons making this speech at this time, for the reason that the testimony will clearly show to the contrary that was produced to the Master.

MR. SIMONS:

Well, now,

MR. HIRSCH:

Let me finish. When Mr. Simons made his similar objection to the Master the Master overruled him and gave his reasons. Now, if Mr. Simons has an objection to make he ought to make it at side bar.—

MR. SIMONS:

Well, certainly.

MR. HIRSCH:

—otherwise, we will be forced to call the Master in to refute what Mr. Simons says.

MR. SIMONS:

If Your Honor please, I resent this last remark.

THE COURT:

All right.

MR. SIMONS:

What I have said here was said before the Master, and the Master did not rule on it.

MR. HIRSCH:

He did rule on it.

THE COURT:

Mr. Simons and gentlemen, Mr. Simons is willing to make his offer at side bar.

MR. SIMONS:

Certainly.

THE COURT:

He might as well do it.

(The following occurred at side bar:

MR. SIMONS:

The Master did not take into consideration the question of obsolescence of these machines. The testimony by Mr. Struve was that in October of 1936 he had ordered fifty-one machines to replace fifty-one machines that he had on the premises at that time because they were of new style and new design and larger machines than what they had at the present time, and their delivery was to have

been made as soon as they could. Now, he gave no consideration to that fact. He also gave no consideration to the fact that the repairs that were done—

THE COURT:

What?

MR. SIMONS:

He gave no consideration to the fact that the repairs to the machines had lengthened the life of the machines. There was considerable testimony to the effect that they had to be re-needed and re-sinkered every so often, and by doing that it would lengthen the life of the machines; and he just considered the entire sum without giving any consideration to that at all.

MR. HIRSCH:

Are you through?

MR. SIMONS:

Yes.

MR. HIRSCH:

Now, then, Mr. Simons's statement is absolutely incorrect, for this reason. When Mr. Simons made similar objection as to obsolescence the Master said he need not take that into consideration for the reason that there was direct and uncontradicted testimony by our witnesses, and not contradicted by any witness called by the defendants, that the market value of the machine as of the time it was injured was in excess of the amount of damages in each case, and, therefore, the

amount of damage would be the measure of damage recoverable.

Furthermore, on the question of improving the machine by the repairs, the Master said that there was uncontradicted and direct testimony by us that the machine was in no way improved by the repair, but on the contrary, our testimony was that after the machine is damaged unless it is completely overhauled the machine is not as good as it was before, in any event, it is no better, so he did take that into consideration.

THE COURT:

Well, the Court is of the opinion that the objection is not a valid one, and it is overruled.

MR. SIMONS:

May I say this? The purpose of the objection is this, that if we so desire we may want to have the right to produce some testimony in rebuttal of this.

THE COURT:

Oh, you undoubtedly have the right to produce any testimony you want along those lines.

MR. SIMONS:

That is it.

THE COURT:

The rules of civil procedure specifically state that the Master shall not be directed to report the testimony taken before him, and, therefore, it obviously contemplates that the Court cannot rule upon what amounts to objections to testimony before the Master.

MR. SIMONS:

That is it.

THE COURT:

But, of course, either side can produce testimony that they wish.)

THE COURT:

Under the Rules of Procedure I instruct you that you may consider the Master's report as evidence of the amount of damages sustained by the plaintiff in this case. All right.

MR. HIRSCH:

Mr. Constantine.

MR. SIMONS:

If Your Honor please, in line with our objections we have entered, we enter an objection to the consideration of that matter in accordance with the rules.

THE COURT:

Yes, surely.

(Report of the Master dated March 28, 1938 was marked Exhibit P-27. A copy thereof follows:

Exhibit P-27

“IN THE DISTRICT COURT OF THE
UNITED STATES
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

APEX HOSIERY COMPANY, a
Pennsylvania Corporation

vs.

WILLIAM LEADER, et al

No. 19950

March Term, 1937

REPORT OF THE MASTER

NOW, March 28, 1939, the undersigned Master appointed under Rule 53 to make and report findings upon the issue of damages sustained by the plaintiff as a result of injury to and destruction of its physical property, plant, machinery, equipment and merchandise, occurring from May 5th to June 23d, 1937 inclusive, finds the following damages sustained by the plaintiff:—

AS OF MAY 6TH, 1937

Glazing	\$ 803.73
Plumbing	359.10
Hardware repairs and supplies	659.01
Electrical repairs and supplies	708.73
Painting	98.06
Doors	130.00
Repairs and replacement of fixtures	4,319.54
Replacement of broken tubes for vapor lights	730.35
Repair and replacing of stencilling machine and parcel post scale	135.00

Exhibit P-27

Repairs to multigraph equipment	\$ 106.71
Repairs to label pasting machines	135.00
Repair and replacement of sealing machine	90.00
Miscellaneous repair and replacement of mill furniture and equipment	1,106.24
Repair to time recording system	895.00
Repairs to desks, typewriters, adding machines, etc.	1,242.07
Repairs to and replacement of venetian blinds in office and plant	751.00
Repairs to and miscellaneous replacement of office equipment	30.00
Miscellaneous repairs in office and plant	161.83
Additional miscellaneous damage	125.00
Damage to machinery other than knitting machines	400.00
Miscellaneous labor, repairing damage	300.00
Inventory shortage, damaged hosiery, labor costs for sorting ware-room merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	4,750.30
Reprocessing of soiled hosiery	2,528.45
Cost of labor for repairing damage to plant and equipment	5,925.00
	<hr/>
	\$ 26,490.12

**AS OF AFTER MAY 6TH, 1937 AND UP TO
JUNE 23RD, 1937 INCLUSIVE**

Doors	60.00
Knitting machinery—bill of Textile Machine Company	67,818.16
Corrosion and damage to machinery—repairs made by Apex	14,605.09
Repairs to time recording system	699.75
Damage to machinery other than knitting machines	740.44
Repairs to fence	37.50
Inventory shortage, damaged hosiery, labor costs for sorting ware room merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	527.00
Repairs to roof	47.60
Damaged silk	175.00
Cost of labor for repairing damage to plant and equipment	934.05
	\$ 82,644.59

TOTAL DAMAGES

As of May 6th, 1937	26,490.12
As of after May 6th, 1937 and up to June 23rd, 1937 inclusive	82,644.59
	\$109,134.71

/s/ David Bachman
Master")

EARL CONSTANTINE, having been duly sworn, was examined and testified as follows:

Direct Examination

MR. HIRSCH:

I am calling Mr. Constantine earlier than would otherwise be the case, he had to come from Washington and wants to get back on the early train, if I may.

BY MR. HIRSCH:

Q. Mr. Constantine, in what industry are you presently engaged and in what capacity?

A. I am president of the National Association of Hosiery Manufacturers.

Q. And how long have you been president of the National Association of Hosiery Manufacturers?

A. Under that title for a year.

Q. One year, and prior thereto what did you do?

A. I was the managing director.

Q. And will you tell us what the National Association of Hosiery Manufacturers is, and who comprise its membership?

A. Why, it is a trade association consisting of about three hundred and fifty plants that compose the membership. The membership represents approximately eighty-five per cent of the total full fashioned capacity and production of the industry, and about seventy-three per cent of the seamless.

MR. KATZ:

Now, if Your Honor please, I object to this witness testifying unless we have an offer of proof as to just what the issue is.

THE COURT:

Yes, that is proper.

MR. KATZ:

In order to clarify it.

MR. HIRSCH:

I offer to prove—

MR. KATZ:

I would like to have it at side bar; Mr. Hirsch.

MR. HIRSCH:

All right.

(The following occurred at side bar:

MR. HIRSCH:

I offer to prove by this witness that he is an expert as to knowledge of the hosiery industry in the year 1937, and prove through him the condition of the industry throughout the year 1937, the total number of sales that were made throughout the Year 1937 as compared with other periods, to indicate through his testimony that the business in 1937 was better in volume than it was in any preceding year, and thereby prove through him the condition of the industry as it would affect the Apex Hosiery Company when it was shut down, showing and laying the groundwork and the basis for our proof of loss of profits, namely, that while we were shut down we were shut down during the period while business was at its height.

MR. KATZ:

I object to that as immaterial and irrelevant to the issues.

THE COURT:

I think it would be rebuttal testimony. It seems to me the proper way to prove these profits is to show the experience of your plant.

MR. KATZ:

That is right.

THE COURT:

You see, you may have been, for all I know, an exceptional plant, one way or the other.

MR. KATZ:

That is right.

THE COURT:

Many plants go counter to the general trend in the industry. It may all be relevant evidence if there is evidence produced to show that the depression period called the sit-down strike, or something of that sort, as bearing on the probabilities of profits in the future, but I think you make your prima facie case by showing your past experience.

MR. HIRSCH:

Well, I said I was calling him out of turn because—

THE COURT:

Well, it isn't only out of turn, but you are calling him out of order. It is rebuttal testimony. Now, I will have to sustain an objection if it is made.

MR. KATZ:

Objection is made.

MR. HIRSCH:

Well, then, I will withhold it.

THE COURT:

Yes, he will just have to wait, I guess.

MR. HIRSCH:

Yes, it may be—

THE COURT:

It may be that you won't need him.

MR. HIRSCH:

No, that may be, and it may be I would have to put him on tomorrow, I don't know. He has to get back to Washington on matters involving this union and the hosiery industry.

(Discussion off the record.)

THE COURT:

I don't think we can consult his convenience and hold the case open.

MR. HIRSCH:

All right.

THE COURT:

If he isn't here when he is wanted we will have to go on.

MR. HIRSCH:

I will renew my request to put him on in rebuttal and succeeding Mr. Meyer if—

THE COURT:

Well, we will see how it works out.

MR. HIRSCH:

All right.

THE COURT:

(At the present time I will sustain the objection.)

MR. HIRSCH:

Mr. Constantine, will you wait in the court, please? Mr. Langer.

JOSEPH C. LANGER, having been duly sworn, was examined and testified as follows:

*Direct Examination***BY MR. HIRSCH:**

Q. Mr. Langer, you are a member of what profession?

A. Public accounting.

Q. You are a certified public accountant?

A. I am.

Q. And for how many years have you followed your profession as a certified public accountant?

A. 1919.

Q. And you are a member of what public accounting institutions?

A. Pennsylvania Institute of Certified Public Accountants, and American Institute.

Q. And you are connected with what firm?

A. Mathieson, Aitken and Company.

Q. And your firm is the accounting firm for the Apex Hosiery Company?

A. They are.

Q. For how many years have they been doing the accounting work for Apex?

A. I believe since 1919.

Q. And what have your particular duties been with regard to the Apex account?

A. I have handled the entire audit assignment from 1929.

Q. So that you are the representative of the Mathieson, Aitken Company in connection with the auditing of the books and records of the Apex Hosiery Company?

A. I am.

Q. And are you thoroughly familiar with those books and records?

A. I am.

Q. It has been testified here by Mr. Steeple that a separate set of books was set up in order to keep the records of damage done at the plant. Are you familiar with those books, likewise?

A. Yes, sir.

Q. And were they maintained under your general supervision?

A. Yes, sir.

Q. That is, as accountant,—

A. Yes, sir.

Q. —as outside accountant for the firm?

A. That is correct.

Q. Now, did you make a complete audit of the books and records of the Apex Hosiery Company for the purpose of determining that company's profit or loss for the period January 1st to May 6th, 1937?

A. That was done in connection with our report for the six months ended June 30, 1937.

Q. And in making of that report did you make a specific audit of the business of the company for the period I mentioned, January 1st—

A. Yes, sir.

Q. —to May 6th, 1937?

A. I did.

Q. The business was open and running during that period, was it not?

A. It was.

Q. And do you have all of your working papers with you covering your report?

A. I have.

Q. And based upon your audit of the company's books and records for the period January 1st to May 6th, will you tell us what the company's profit or loss was for that period from its hosiery business operations alone?

MR. SIMONS:

I object to that. If Your Honor please, I don't believe that the testimony should merely be in a lump sum of that kind. I don't know what kind of audit was made. We don't know what the audit consisted of.

THE COURT:

You can cross examine now on the witness's qualifications to testify, if you wish.

MR. SIMONS:

Will you permit me to do that now?

THE COURT:

Yes, surely, on his qualifications.

(Direct examination suspended.)

Cross Examination

BY MR. SIMONS:

Q. Now, Mr. Langer, you made an audit of the books from January 1st to May 6th, inclusive?

A. As part of our audit for the six months ended June 30, 1937.

Q. Well, you made the audit when, June 30, 1937?

A. That is correct.

Q. At that time the books were where?

A. At the company's office.

Q. And where is their office?

A. Fifth and Luzerne.

Q. Did you make an audit at Fifth and Luzerne Street on June 30th?

A. No, not as of June—some time in July.

Q. And who closed those books?

A. The books weren't closed on June 30th.

Q. Who took care of the books before that time, during the six months period?

A. The bookkeeper.

Q. And who was that?

A. Mr. Dingas.

Q. Mr. Dingas, and was it your custom to make an audit of the books every six months?

A. Yes, sir.

Q. And were there inventories taken at the end of that period of time, physical inventories taken?

A. There was a physical inventory taken at June 30th.

MR. HIRSCH:

Keep your voice up.

BY MR. SIMONS:

Q. There was a physical inventory taken on June 30th?

A. As of June 30th.

Q. As of June 30th. You personally took that physical inventory?

A. No, sir, but I did go around with the employees of the company, and when they called off—they had taken the inventory and marked down the quantities, and I checked the list that they reported and called off to me against the total which they reported to me on the individual sheets.

Q. Well, you mean you checked merely the total figures?

A. Merely visual test.

Q. That is, tested just the figures; you yourself didn't take the inventories?

A. No, sir.

Q. And you didn't take the inventories at the beginning of the year?

A. No, sir.

Q. Now, are those the figures there you are quoting?

A. Well, I have our report here.

Q. May I see that?

A. Yes, sir.

Q. Well, may I see this?

A. Well, just—

Q. This is your work sheet, isn't it?

A. No, this is not the work sheet.

Q. Well, that is what you are looking at?

A. Well, I am looking at this here (indicating).

Q. Yes, well, may I see it?

A. Sure.

(Papers were shown to Mr. Simons.)

BY MR. SIMONS:

Q. Do you have your figures—where are your figures up to May 6th?

(The witness produced a report.)

MR. HIRSCH:

No, no, I don't know what all these figures are. He hasn't testified to this yet.

THE COURT:

No, you can't go into your whole cross examination, Mr. Simons, now,—

MR. SIMONS:

No.

THE COURT:

—but if you want to see whether he actually saw the books, and—

MR. SIMONS:

I want to see the report.

MR. HIRSCH:

He hasn't testified to the report yet. I don't want to permit Mr. Simons to rummage through all his papers.

THE COURT:

It is quite right.

MR. SIMONS:

If Your Honor please, he is going to testify from a report as to the profits.

THE COURT:

Well, Mr. Simons, you can't cross examine him on something he is going to testify to. You will have to postpone your cross examination until he has testified. If you want to cross examine him as to what he did there and what he saw, that is all right. In other words, if you develop that he didn't make any audit at all, that

would be a different proposition, but you can't fully cross examine him until he has finished.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. Now, Mr. Langer, you took the totals that appeared on your general ledger?

A. Yes, sir.

Q. That were compared by the bookkeeper?

A. Yes, sir.

Q. And you merely made up a statement from those figures of the general ledger?

A. No, sir, we made an audit of the accounts pertaining to those figures submitted to us at that time.

Q. Well, when you say you made an audit, what did you do?

A. We examined certain of the records in detail of the—

Q. Well, now, which records did you examine in detail?

A. Cash.

Q. You checked the cash against the bank?

A. Yes, sir.

Q. Now, that has nothing to do with the question of your profit and loss directly? That is an asset?

A. That is correct.

Q. Now, take your question of your sales.

A. Yes, sir.

Q. What did you do with regard to sales?

A. We made a test of specific months.

Q. Well, when you say you made a test of specific months what does that mean?

A. That means we took certain specific months during the period and actually footed them to see

that the total agreed with the amount that the company shows that the sales amounted to for that particular period.

Q. In other words, you didn't take the adding machine tape figures, but you checked amongst the figures to see if the addition is correct?

A. That is correct.

Q. And that is as far as your check on sales was concerned?

A. Yes, sir.

Q. Now, what other check did you make on the books and records?

A. Made vouching with the expenses.

Q. Well, what do you mean when you say you vouched the expenses?

A. We examined the invoices pertaining to the respective purchases and saw they were properly distributed.

Q. And you had no difficulty checking all the bills and all the invoices during that period of time?

A. Not the particular periods which we examined.

Q. You had all your books and all your records there?

A. They were all there.

Q. And all the invoicees were there?

A. Yes, to the best of my knowledge.

Q. Well, did you check them all?

A. Under my supervision, yes, they were checked.

Q. Well, now, as a matter of fact, you didn't check all the details of any of these sales or purchases or items of expense outside of the fact to see that they were in the books and properly posted?

A. I examined the invoices pertaining thereto.

Q. Every invoice?

A. Yes, sir.

Q. All right, now, what else did you do besides check the invoices and check your additions on the sales?

A. Vouched all the postings from the books of original entry.

Q. Did you personally check all the postings from the books of original entry to the ledger?

A. Not personally, but under my supervision.

Q. Well, now, what do you mean by under your supervision?

A. I had two other men with me on the assignment.

Q. And the two other men were who?

A. Were our employees, men of our organization.

Q. You mean two men of Mathieson, Aitken and Company?

A. That is correct.

Q. And they checked all the postings?

A. They checked the postings.

MR. HIRSCH:

Keep your voice up, please, so that everybody can hear you.

Can you hear him all right?

A JUROR:

Not very well.

MR. HIRSCH:

Keep your voice up, Mr. Langer. These ladies want to hear you, and so do the gentlemen.

THE WITNESS:

All right.

BY MR. SIMONS:

Q. And what else did you do?

A. Well, we made other tests and verifications sufficient in scope to satisfy ourselves as to the correctness of the entries made on the books.

BY THE COURT:

Q. How long did it take you to make the audit?

A. Approximately ten days.

BY MR. SIMONS:

Q. And what did you do on the matter of depreciation?

A. We used the rates which had been approved by the Department in 1934.

BY MR. HIRSGH:

Q. What Department?

A. Revenue Department.

BY MR. SIMONS:

Q. And did you apply your depreciation at that time?

A. At what time do you refer to?

Q. At the time of the audit, I mean, for that period.

A. I believe it was applied then.

Q. Now, were there any figures considered in that statement with regard to any business done or any action between May 6th and June 30th, any expenses during that period? Was that all considered in your profit and loss?

A. Would you mind repeating that question so I get that?

Q. Did you include in your audit and in your report of the expenses, payments of salary and payments made chargeable as an expense from the period of May 6th to June 30th?

A. We included that in our report.

Q. That was all included in your report?

A. Yes, sir.

Q. That is, all your overhead, all the items of salary and what other items would there be?

A. May I look in my report?

THE COURT:

Oh, don't go into it now.

MR. SIMONS:

No, no, if Your Honor please, I think that that phase of it is important.

THE COURT:

Well, it is important, but it is not the time to examine him on it now.

MR. HIRSCH:

To bring it to a head, I will object to further cross examination on the ground that this witness has shown his qualifications to testify.

THE COURT:

Then I will sustain it. You can examine—

MR. SIMONS:

If Your Honor please, may I object to his qualifications to testify?

THE COURT:

I will overrule your objection. Now, you can examine him as fully as you want as to the credi-

bility of his testimony after he gives it, but we can't go into that now, until he testifies.

MR. SIMONS:

Well, if Your Honor please, the reasons for my objection, if I may state them—I think it is important—are several. First of all, I don't doubt that Mr. Langer has made an accurate from the figures that appeared on the books, but you have several factors. First of all, there is no actual, physical inventory taken by him that he can check on June 30th. Secondly, there have been a lot of items included from May 6th to June 30th that I don't think are matters that can be considered in the question of computation of any profits or losses for that period of time.

MR. HIRSCH:

I haven't asked him about that period.

THE COURT:

That goes to the—

MR. SIMONS:

The audit, however, covers a six month period ending June 30th.

THE COURT:

That goes to the accuracy of his work and all that, but—

MR. HIRSCH:

May I proceed?

THE COURT:

Yes.

MR. SIMONS:

Enter my objection, if Your Honor please.

THE COURT:

Yes; it is overruled.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Before I ask you this question of profit and loss I am directing your attention now solely to the period of January 1st to May 6th. Did you make an audit of the books and records as of June 30, 1937 which would permit you now to give us the exact figures as to the profit or loss this business sustained during the period January 1st to May 6th?

A. I did.

Q. And was the audit which you made, made in the usual and customary manner, as followed by accounting practice?

A. Yes.

Q. As dictated by good accounting practice.

A. It was.

BY THE COURT:

Q. And was it made from the books and records regularly kept by the company, in the custody of the usual and proper officers, and supplied to you by them?

A. It was.

THE COURT:

Yes.

MR. SIMONS:

May I just ask one question along that line, if Your Honor please?

THE COURT:

Yes, all right.

BY MR. SIMONS:

Q. Did you take an actual, physical inventory on May 6th, 1939?

A. No, sir.

Q. '37.

A. No, sir.

THE COURT:

Go ahead.

MR. SIMONS:

Now; I therefore object to that figure, if Your Honor please.

THE COURT:

Yes, it is overruled.

BY MR. HIRSCH:

Q. Now, based upon your audit of the books and records what was the company's profit or loss for the period January 1st to May 6th, 1937?

MR. KATZ:

Just a moment, if Your Honor please, I object to the question on the ground that it is not a proper method of proving a loss sustained in this case, nor does it flow from any damage, nor does it flow from any unlawful acts committed by any of the defendants—

THE COURT:

Yes,—

MR. KATZ:

—in this case within the meaning of the Sherman Act.

THE COURT:

—well, I understand your point and the discussion of the thing we had yesterday, and I will overrule the objection. All right.

THE WITNESS:

You refer now from hosiery operations?

MR. HIRSCH:

From hosiery operations alone.

THE WITNESS:

\$110,575.50.

BY MR. HIRSCH:

Q. Was that a profit or a loss?

A. That was a profit.

BY THE COURT:

Q. May I inquire why you made the qualification "hosiery operations"? Did the mill have other operations?

A. No, sir, but—

MR. HIRSCH:

It had other income.

THE COURT:

It had other income?

BY MR. HIRSCH:

Q. Will you explain to the Judge what

THE COURT:

No, you don't need to. That is all I want to know.

BY MR. HIRSCH:

Q. What was the total volume of sales for that period, in dollars?

MR. KATZ:

Same objection.

THE COURT:

All right.

A. \$2,284,262.08.

BY MR. HIRSCH:

Q. And how many—

BY THE COURT:

Q. I will have to ask you to give that to me again.

A. \$2,284,262.08.

Q. All right,

BY MR. HIRSCH:

Q. And do you have the figures showing the number of dozens of pairs of stockings which were shipped during that period and which are represented by the sales figure of \$2,284,262.08?

A. Yes, sir; 405,233 dozen.

Q. And based on a profit from hosiery operations alone of \$110,575.50 during the period from January 1st to May 6th, 1937, and on sales—and on shipments, not sales, during that period of 405,233 dozen, what was the net profit per pair?

A. Approximately twenty-seven cents.

BY THE COURT:

Q. Per dozen or pair?

A. Per dozen.

MR. SIMONS:

If Your Honor please, it is understood that covers that one period that you are talking about.

THE COURT:

Yes.

MR. HIRSCH:

That is correct.

BY THE COURT:

Q. Twenty-seven cents a dozen?

A. That is right.

Q. On what average price per dozen, do you happen to remember?

A. Not offhand.

Q. About what was it?

A. I couldn't say.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, did you at my request break down the period January 1st to May 6th into days and weeks?

A. I did.

Q. And on a weekly basis what was the average net profit of the business during that period?

MR. SIMONS:

If Your Honor please, I object to that. I don't think that that is the manner of proving profits in a case of this kind. Subject of course, to our general objection and the whole line of examination, I think it is a question of taking periods of time and showing what happens over a long

period of time. He has only chosen a period of five months here.

MR. HIRSCH:

And the law only requires—

THE COURT:

What you mean is the average net profit per week?

MR. HIRSCH:

That is correct.

THE COURT:

I think it will assist us. I will overrule your objection.

MR. HIRSCH:

Go ahead.

THE WITNESS:

Would you mind repeating that question?

BY THE COURT:

Q. What was the average net profit per week during that period?

A. Well, I didn't break it down in weeks.

Q. All right.

A. Eighteen weeks was \$110,575.50.

Q. That is eighteen weeks?

A. Eighteen weeks.

THE COURT:

Well, all right. Anybody can divide that that wants to. It is a pure mathematical operation.

MR. HIRSCH:

All right, it is approximately—

MR. SIMONS:

Well, now,—

BY MR. HIRSCH:

Q. Well, will you do it?

A. Certainly.

Q. I want that figure on the record.

MR. HIRSCH:

It is \$6,111., if my opponents will accept that figure, subject to correction.

THE WITNESS:

How much is it?

MR. HIRSCH:

\$6,111. per week, subject to correction.

THE COURT:

All right.

BY MR. HIRSCH:

Q. That period is the first eighteen weeks of the year, leaving thirty-four weeks for the balance of the year?

A. That is correct.

MR. HIRSCH:

There will be a certain phase of Mr. Langer's testimony which I will have to withhold, Judge Kirkpatrick. I mean, I can't ask him the accounting question until I get another witness in ahead of him.

THE COURT:

All right, any way you want to.

BY MR. HIRSCH:

Q. Did you make an audit of the books and records of the Apex Hosiery Company for the period May 6th to December 31, 1937, to determine the profit or loss sustained by the business during that period?

A. I made an audit as of December 31, 1937. That would be the six months covering from July 1st to December. That is embodied in our total report for the year.

Q. But as a result of the audit you made as of June 30th and the one you made as of December 31, 1937, are you able to compute exactly the profit or loss which the business sustained, the Apex business sustained, during the period of May 6th, 1937 to December 31st, 1937?

A. Yes, sir.

Q. And in making those audits—in making the audit of December 31, 1937 did you follow the usual and customary accounting practice, acceptable in the accounting profession?

A. I did.

Q. And did you follow the same methods and technique which you have described on cross-examination by Mr. Simons?

A. I did.

Q. What was the Apex Company's profit or loss for the period May 6th to December 31, 1937?

MR. KATZ:

Now, that is objected to, if Your Honor please, because innumerable elements may enter into this.

THE COURT:

Yes, I wonder if that is not just going to mix us up. What do you want to put that in for? How does that help us?

MR. HIRSCH:

Because I propose to follow it up by showing what our profits would have been if we had been permitted to operate uninterruptedly, and I am getting this figure in now, and the other figure will go in later, and the difference will be our loss. In other words, it is a question of being made whole, and we will prove that instead of making money, we lost money, and we will prove why, and I intend to follow it clearly through, and if I fail to sustain the proof on any item it can always be stricken from the record on motion.

MR. KATZ:

That technique may please Mr. Hirsch—

MR. HIRSCH:

A thing of this kind cannot be proved all at one time. It has to be done in segments and the whole picture put together.

THE COURT:

Well, yes, I know, but here is a long period to December 31st, and as Mr. Katz says—

MR. HIRSCH:

Well, Judge Kirkpatrick, this will be from hosiery operations alone, and I also intend by another witness to prove what our profit would have been, and I will prove that in a manner which is proper under the cases.

THE COURT:

Well, how is it different? In other words, you have established now that as you were running along you were making \$6,111. a week. Now, you were closed down for six weeks.

MR. HIRSCH:

Well, we were closed down almost until November 1st.

THE COURT:

Well, whatever you were closed down as a result of the strike. Wouldn't that be your *prima facie* case? Is there any use of complicating it by showing—

MR. HIRSCH:

Let me explain, sir,—

THE COURT:

I can see—

MR. HIRSCH:

—instead of making a profit, let's use a little, simple figure, instead of making a dollar, we lose two dollars; we are out three dollars. Now, that is a simple case.

THE COURT:

Yes.

MR. HIRSCH:

So in this case I will prove by another witness what we should have made, what we would have made if we could have gone on uninterrupted. I prove by this witness what we actually lost, and the difference is what is necessary to make us whole.

Now, I can withhold this question at this time and have it follow the other testimony of what we would have made, but I don't think that is terribly important, whether it goes in at this time or later.

MR. KATZ:

I think it is.

THE COURT:

All right, you withhold it, then, because I don't think it belongs in here at the present time. What does the evidence show about the length—has that been shown?

MR. HIRSCH:

Yes, the length of time; the plant resumed partial operation on August 19th. That was the first time a machine turned, and it wasn't until November 1st that the plant was running full—~~pardon me~~, it wasn't until November 1st that the major repairs were completed, which meant the plant could run full. I therefore have the right to show, which I will by a subsequent witness, the business we would have done if we had not been shut down and crippled by the strike, both from the possession of the plant and the physical damage, and what we would have made on that business. I mean, that is the profit that we are entitled to. That is a profit. Now, on the contrary, instead of making a profit we sustained actually a loss, because we were closed and not able to function, and the difference is the only amount that will make us whole. In other words, we are entitled to the difference between what we would have made and what

we lost as the recoverable item. Otherwise we are not made whole.

MR. KATZ:

But that is the whole issue, that is the whole issue.

MR. SIMONS:

If Your Honor please, I feel we are getting into a rather lengthy discussion here on matters that might be taken up at side bar, because I don't believe all those figures are relevant, and the cases do not hold that they are relevant. I think he is getting far afield in the matter of conjecture by presenting the testimony as he is doing now, and I object to it.

THE COURT:

I will sustain the objection at the present time.

MR. HIRSCH:

All right, I will put it in, then, at a later time.

BY MR. HIRSCH:

Q. You have given us the volume of business from January 1st to May 6th, 1937, in dollars. Will you give us the volume of business done by the Apex Hosiery Company based on your audit of its books from May 6th until December 31, 1937?

MR. SIMONS:

I object to that, if Your Honor please, for the same reason.

THE COURT:

Well, that is a different question. That bears

on the question. You see, it would be very simple if the mill had started full operation on June 23rd, we would have no difficulty about it, but here is a situation where the mill was partially crippled over a considerable period of time, and—

MR. SIMONS:

Well, but—

THE COURT:

—and the testimony as I remember it is that complete repairs were not made until the first of the year.

MR. HIRSCH:

That is right.

THE COURT:

Major repairs, as Mr. Hirsh has said, were made in November. Now, we have got to determine to what extent the mill was crippled, don't we? How else—

MR. SYME:

And to what extent. You see, there is a lapse of a period from June 23rd until the settlement of the strike when there is ordinary picketing, and when even the plaintiff doesn't contend that there was a violation of the Sherman Anti-Trust Act. Now, the plaintiff in this case wants to say that from May 6th until the time they resumed operations it was crippled because of the destruction of the machinery.

MR. HIRSCH:

That is our proof.

MR. SYME:

Now, just one minute. Isn't there another element entering into this picture? Certainly it is admitted if this plant was crippled by legitimate strike activities there would be no claim whatever. Now, there is a period from June 23rd when the plant was evacuated when there was ordinary picketing, when there was no sit-down strike, when the plaintiff and defendants were negotiating. Now, certainly during that period the plaintiff does not claim a loss of profits because of crippling of the plant.

MR. HIRSCH:

We certainly do.

MR. SYME:

The element of a legitimate strike enters into that and that must be taken into consideration, Your Honor.

MR. HIRSCH:

There is no evidence of that, if Your Honor please. The evidence is clear that the plant was so badly damaged that immediately following the evacuation of the plant the repairs to the damage began, and it wasn't from the time that they evacuated until August 16th, or 19th, that we even ran a machine or were able to run a machine. The evidence is clear that from that moment on we could only run partially until the major repairs were completed, and that all repairs were not completed until the end of the year, and it is a very simple matter, if Your Honor please, to show just what the result of this crippling was, and the result of our in-

ability to take orders and ship merchandise, by showing our actual experience during the remainder of the year, because if we ran and shipped they get credit for it in our profit and loss figures, and when we couldn't run, by reason of the only testimony in the case—what Mr. Syme is talking about isn't in the case, I haven't heard any testimony to that effect—the only reason that we couldn't run was because the plant had been so badly damaged and crippled it couldn't be run. That is the direct testimony of several witnesses.

MR. SYME:

It is the direct—

MR. HIRSCH:

Now, I don't care whether they were picketing on the outside, whether we were negotiating on the outside, the fact remains under all the testimony in this case, uncontradicted, that we couldn't operate the plant by reason of the damage sustained during the sit-down strike, and it is for the period that we were crippled and to the extent that we were crippled, as borne out by the evidence, that we are entitled to recover for the loss we sustained, and that is the way I am trying to prove our loss.

MR. SYME:

That is Mr. Hirsch's construction of the evidence. The evidence is also perfectly clear that the plant was evacuated on June 23rd, that negotiations were begun on June 23rd, that negotiations continued until the latter part of July, and that during that period there was legitimate picketing.

MR. HIRSCH:

There is no such evidence in the case.

MR. SYME:

Oh, yes, by your own witnesses.

MR. HIRSCH:

There is no evidence in the case that any picketing prevented us from operating the plant. The only evidence is that we couldn't operate because we were crippled,—

MR. SYME:

Well, of course, that—

MR. HIRSCH:

—irreparably crippled.

MR. SYME:

—is your construction of the evidence, but the evidence is there that there was an evacuation of the plant—

MR. HIRSCH:

We have the jury, then.

MR. SYME:

—on June 23rd,—

MR. HIRSCH:

We will leave that to the jury.

MR. SYME:

—and until the settlement of the strike there was no further damage or destruction of property, and the only way they were prevented from operating was by legitimate strike activities.

THE COURT:

Well, the question has to do with total busi-

ness done from May 6th to December 31st. I will overrule the objection.

MR. SIMONS:

If Your Honor please, may I just say one thing now?

THE COURT:

No, what is the use? I have ruled on the question.

BY MR. HIRSCH:

Q. What is the answer?

A. Would you mind repeating that question?

THE COURT:

Total amount of business, sales,—

MR. HIRSCH:

From May 6th to December 31st.

THE COURT:

—dollar sales and dozen sales, from May 6th to December 31st.

THE WITNESS:

Dollars: \$1,575,252.16. Dozens, 275,791.

BY MR. HIRSCH:

Q. Now, did you make an audit of the books and records of the Apex Hosiery Company to determine the amount of fixed charges, carrying charges, expenses and salaries which the Apex Hosiery Company was forced to incur during the period from May 6th to August 19, 1937, which was the first date when they began any manufacturing operations.

MR. SIMONS:

I object.

MR. KATZ:

I object to the question.

MR. HIRSCH:

How many of you are going to object here?

MR. SIMONS:

Go ahead.

MR. KATZ:

I object to the use of the word "forced".

There is no evidence in the case they were compelled to do anything.

THE COURT:

That is true.

MR. HIRSCH:

Leave out the word "forced".

MR. SIMONS:

If Your Honor please, I objected on the ground of proper accounting practice; I mean, Mr. Hirsch is trying to get us from both angles here. First of all, he says we are responsible for the value, the fixed value of that plant during that period of time, meaning the overhead charges, because of the fact they didn't have the use of the plant, and then he also says to us, "In addition to that you are responsible for profits that we would have made", which profits take into consideration the fixed value. Now, you will have to take either one or the other. We can't be responsible for both.

MR. HIRSCH:

No, I agree with Mr. Simons, that we can't recover for both.

MR. SIMONS:

Well, then,—

MR. HIRSCH:

Are you finished?

MR. SIMONS:

Go ahead.

MR. HIRSCH:

But because Your Honor has at the moment excluded the one figure I am proving the other figure, and then after having proved both figures I am going to ask Your Honor to rule on what I consider to be the proper theory, namely, the difference between what we would have made and what we actually lost, which will include this sum, but if Your Honor should rule against me, then I would be entitled to what we should have made plus what we were actually—what we actually incurred during the sit-down strike—

THE COURT:

Well, now, gentlemen,—

MR. HIRSCH:

—and during the period we were closed.

THE COURT:

Well, now, gentlemen, it seems to me that the proper measure of damages here would be to apply the profit figure obtained during the operating period of January 1st to May 6th to the amount of business which you can show you were prevented from doing by reason of the strike. Now, that is all it is, and it is quite simple. I don't believe there is anything else to talk about.

MR. HIRSCH:

But in addition, Judge Kirkpatrick, that would have been the amount of profit by which our assets would have been increased, but on the contrary, instead of our assets being increased by a profit, they were decreased by the loss which we directly sustained as a result of this interruption of our plant,—

THE COURT:

No,—

MR. HIRSCH:

—and only by getting the difference—

THE COURT:

—I don't think—

MR. HIRSCH:

—would we be reimbursed in full—

THE COURT:

No, I don't think so. That was entirely up to you. If you wanted to, you could have shut down and stayed shut down.

MR. HIRSCH:

That is the point. We still would have had to incur certain fixed charges and carrying charges.

THE COURT:

No, you wouldn't. Suppose you had never opened up again.

MR. HIRSCH:

What has that to do with insurance, with taxes, with fixed charges? What would we do with depreciation of our plant and machinery?

THE COURT:

That is not lost.

MR. HIRSCH:

They are charges that go on whether we operate or not.

THE COURT:

That is not loss. You are getting something for your insurance.

MR. HIRSCH:

The cases say it is loss.

THE COURT:

What cases?

MR. HIRSCH:

The Rice case, which was just recently decided.

MR. SIMONS:

The Rice case is not a case under the Sherman Act at all.

THE COURT:

Let me say something.

MR. SIMONS:

I am sorry.

THE COURT:

Don't keep interrupting me, gentlemen. I don't get a chance to rule, even.

When you pay for insurance you are buying something. That is not a loss. You are getting it. When you pay for protection and watchmen and that sort of thing you are buying something here. I don't figure that that can be an

item of loss. It seems to me very plainly that the thing to do is to determine the amount of business, either units or weeks, I don't know yet whether we should apply a time basis or a dollar basis or a merchandise basis, to find the amount of business that you were prevented from doing by the strike, and then apply your per unit figure of profit, ascertained from January to May, to that basis, and I think that would get you the proper measure of damages in the case.

MR. HIRSCH:

That would fix, Judge Kirkpatrick, the amount of profits,—

THE COURT:

Yes.

MR. HIRSCH:

—but it wouldn't fix the other expenses for which we are entitled to be reimbursed by reason of the fact you must appreciate that while we were shut down we had to incur running expenses. We had no business to counterbalance that expense. We had no income to counterbalance that expense.

Now, let us assume, let us assume a crippled example. We start with a unit of a thousand dollars. We should have made one hundred dollars. That would make it eleven hundred dollars in assets. Instead, by reason of the shut-down we were forced to lay out two hundred dollars for expenses. We then have eight hundred dollars. Only by recovering three hundred dollars would we be made whole, and the law is that

we are entitled to be made whole as a result of damage sustained through any wrongful act of a litigant. Now we cannot be made whole if we only recover the one hundred dollars we should have made, when we are two hundred dollars out on our expenses. And, so, in this case, if we were only recovering the profits we would have made and not the losses we had to incur—and this is a case directly in point, sir,—

THE COURT:

Well, let me see it. I am open to conviction on the matter.

Suppose you get 22 Federal Supplement.

That case very clearly seems to say that that is a proper element to consider.

MR. SIMONS:

If Your Honor please, first of all, may I direct to your attention that that is not under the Sherman Act.

MR. HIRSCH:

That has nothing to do with it.

MR. SIMONS:

Wait a second—it has something to do with it, because there are a whole line of cases since 1890 and before that time that discuss the damages under the Sherman Act. That is a case for direct trespass that was brought in the Federal Court on the ground of diversity of citizenship, and the measure of damage in that case is different from the measure of damage in an action under the Sherman Act.

Now, all the cases under the Sherman Act dis-

cuss the question of the measure of damages; and they specifically say that you can take either one or the other.

MR. HIRSCH:

There is no such case there. There is no such case which says that you must take—

MR. SIMONS:

It is discussed from the time Sedgwick wrote his treatise on damage. He distinguishes those two and goes through a whole line of cases.

MR. HIRSCH:

The law of damages under the Sherman Act is exactly the same as in any other case in so far as proof of damages and the element of damage are concerned, and there is no distinction. The Sherman Act says "damage". It doesn't qualify it or define it.

MR. SIMONS:

Read the cases.

THE COURT:

Well, I will permit you to prove it in your way. You may be right about it. I will overrule the objection.

MR. HIRSCH:

Will you repeat the question, Mr. Rodebaugh, please?

THE COURT:

It does seem to me that you can add to the loss of profits the actual out-of-pocket expenses for maintenance you had to pay during the period, because obviously you weren't going to go out of business and you couldn't hold your

force together without paying certain necessary salaries and certain overhead, and you really weren't getting anything from that in the way of return.

MR. HIRSCH:

No income.

THE COURT:

I don't know about insurance. That is a different matter. I doubt very much that you can include your insurance in the loss, but you certainly should be able to include salaries of executive officers, that you would have to pay in order to hold them, and necessary expenses. I don't believe insurance is an item.

MR. HIRSCH:

I think it comes under fixed or carrying charges, sir, under that case. It says fixed and carrying charges.

THE COURT:

Well, I don't see why it is.

MR. HIRSCH:

Well, I don't mind eliminating it.

THE COURT:

I don't see why insurance is a loss.

MR. HIRSCH:

I don't mind eliminating it.

THE COURT:

But where you were compelled to pay out money for which you got nothing, that it seems to me should be a proper item of damage. Where you got something for it, then it is taken care of in your loss of profits item.

Go ahead, Mr. Hirsch, will you repeat the question?

BY MR. HIRSCH:

Q. Did you make an audit of the books and records of the Apex Hosiery Company to determine the amount of fixed charges, carrying charges and expenses, salaries, and so forth, which it incurred during the period—which it necessarily incurred—during the period May 6th to August 19th, 1937, which was the first date when they began any manufacturing operations? Limit it just to that period for the moment.

A. I did.

Q. And tell us, first, the total of those expenses, and then tell us—well, you can tell us in detail.

A. Want the total?

Q. Yes.

A. \$149,852.87.

Q. And how much of that figure per day?

A. Approximately—

MR. SIMONS:

I object to that.

A. —one thousand—

MR. SIMONS:

If Your Honor please, I don't know that that is the figure to be considered in the matter.

MR. HIRSCH:

Well, I am asking just the daily breakdown, which is arithmetical.

THE COURT:

Go ahead.

THE WITNESS:

\$1,168.98.

BY THE COURT:

Q. Now, what does that include, Mr. Langer?

A. That includes salaries of superintendence—shall I give the amounts in each case?

Q. Well, all right.

A. Six thousand—

Q. Are there a lot of them?

A. Quite a few; about twenty-five or thirty items.

Q. Well, read them down the list.

A. All right. Superintendence, factory supervision, indirect labor, mill supplies, taxes and water rent, depreciation—

Q. Well, you see, I don't think you are entitled to taxes and water rent, and I don't think you are entitled—go ahead.

A. Depreciation, insurance,—

Q. I don't think you are entitled to insurance.

A. Heat and light, general factory expense, boarding form rental and expense, freight and express, shipping wages, traveling expense, sales office rent and expense, salesmen's salaries, salaries of officers, office salaries, telephone, legal and accounting, office expense, postage, dues and subscriptions, general expense, Pennsylvania Capital Stock tax, Federal Capital Stock tax, and Social Security tax.

THE COURT:

Well, now, take an item—a small item, undoubtedly—but take an item like postage. That is not a loss. We don't know—he got his mail carried for the two-cent stamp or the three-cent stamp that he put on there. Do you claim that is all dead loss?

MR. HIRSCH:

I say, Judge Kirkpatrick, that any outlay of money which was properly made during that period when there was no income from any business, when we were shut down tight, represents a loss to us by reason of the fact that we had no method of recoupment out of sales and income. It was a dead outlay, with no income to counterbalance it, and I say, therefore, that all items which were properly expended—now, if you say, "Well, you had no right to write a letter", I would have to exclude it, or if you said, "You had no right to have insurance, you should have cancelled it during that period", I would have to waive and exclude it, but, obviously, we had to maintain our insurance, which was a charge even though our plant was closed. Now, that was an expense which was not counterbalanced by any income, and so long as it was a necessary and proper expense, and so long as you don't rule on any of these items by saying, "Well, that wasn't necessary",—

THE COURT:

I can't tell.

MR. HIRSCH:

—I say then we are entitled to be reimbursed for that, if we are not entitled to recover the loss sustained based on a profit and loss statement; which is the other element of damage—

THE COURT:

All right.

MR. HIRSCH:

—which I will endeavor to prove.

THE COURT:

I will let you prove it this way.

THE WITNESS:

Mr. Hirsch, may I correct the total there? I gave him the wrong amount.

BY MR. HIRSCH:

Q. What is it?

A. \$149,852.87 should be changed to \$122,742.95.

Q. \$122,—

A. —742.95.

THE COURT:

Very well.

THE WITNESS:

The daily amount is ~~correct~~.

BY MR. HIRSCH:

Q. Now, did the above items include any items covering expenses incurred by the business in connection with the repair or damage to plant, machinery and equipment?

A. No, sir.

Q. And did it include any of the salaries which the company expended to persons who were engaged in the repair of damage?

A. No, sir.

MR. HIRSCH:

I am through with my direct examination of this witness in so far as I have gone, and ask leave to recall him for the other questions which Your Honor thought should come at another time, when I have produced other witnesses.

THE COURT:

All right.

MR. HIRSCH:

Cross examine.

MR. SIMONS:

If Your Honor please, may I ask that this testimony be stricken from the record?

THE COURT:

I will deny the motion.

Cross Examination (Continued).

BY MR. SIMONS:

Q. Let me see your statement for 1937, to May 6th?

THE COURT:

I think before you start your cross examination we might take a ten minute recess.

(Recess at 11:15 A.M.)

JOSEPH C. LANGER, resumed.

Cross Examination (Continued)

BY MR. SIMONS:

Q. May I have your last item of expenses, the fixed expenses that you had?

MR. HIRSCH:

Oh, pardon me, I haven't concluded my examination.

THE COURT:

Yes, all right, finish it.

MR. SIMONS:

Oh, I am sorry, I thought you said you had.

MR. HIRSCH:

I did say it. I just recall something. I only went up to August 19th.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Now, Mr. Langer, beginning August 19th and running to December 31st there was some production at the plant?

THE COURT:

There was some what?

MR. HIRSCH:

Some production at the plant.

THE COURT:

Yes.

BY MR. HIRSCH:

Q. Is that correct?

A. From August 19th to the end of the year?

Q. Yes.

A. Yes, sir.

Q. Now, have you, based on your audit of the books and records of the company, compiled the amount of fixed charges and carrying charges, ex-

penses, salaries, et cetera, which the Apex Company incurred during the period of August 19, 1937 to December 31, 1937, in a way which would allocate those expenses as between the business done and that which should have been done.

MR. HIRSCH:

I better explain that to Your Honor.

MR. SIMONS:

I object to that, if Your Honor please. I think that—

THE COURT:

Oh, yes, all right. Now, let's hear about it, what the point is, first.

MR. HIRSCH:

Why, August 19th to the end of the year we ran on a part-time basis, in the beginning very little, and gradually stepping up production. I have asked Mr. Langer to, therefore, distribute these charges to the productive side of the business and to the unproductive. To give you a ~~handy~~ example, if our average production, which he will testify to, was—for argument's sake, I don't know what the exact figure is, one-third of capacity, then one-third of those fixed charges are set aside and not asked for in this action.

THE COURT:

Yes.

MR. HIRSCH:

Because they are compensated for by the production.

THE COURT:

Yes, all right.

MR. HIRSCH:

And the other two-thirds—

THE COURT:

I understand, it is all right.

MR. HIRSCH:

My question was a little involved.

THE COURT:

Yes, I was just wondering—

BY THE COURT:

Q. You first got the total amount of these same items of fixed charges from August 19th to December 31st, didn't you?

A. Yes, sir.

Q. And what was the total amount?

A. Well, may I amplify that statement somewhat?

Q. Well, does it have to be amplified?

MR. SIMONS:

That is taken subject to my objection.

THE COURT:

Yes, surely.

A. The thing, Your Honor, the repairs were all completed, that is, the major repairs were completed by November 1st, so no claim for overhead has been predicated in my figures beyond that point.

MR. HIRSCH:

Oh, that will restrict the period.

BY THE COURT:

Q. Then it is August 19th to November 1st?

A. To October 29th, to be exact.

BY MR. HIRSCH:

Q. To October 29th?

A. Yes.

MR. HIRSCH:

I am glad you told me that.

BY THE COURT:

Q. Did you get the total overhead for that period?

A. There are seventy-one days, at the daily rate of \$1168.98, or a total of \$82,—

Q. Now, wait, seventy-one days?

A. Yes, at \$1168.98.

Q. Seventy-one days at \$1168.98?

A. Total of \$82,997.58.

Q. All right. Now, then, did you also calculate the average production during that period?

A. We took the actual production during that period and predicated upon the normal production, what those machines should be able to do.

Q. Well, where did you get that figure?

A. That was computed, when we calculated the U. and O. insurance, and a schedule was made of each machine.

Q. Well, now, you are assuming that you worked them full?

A. Assuming the normal capacity of that machine, after it reaches its maximum efficiency, in other words, while the machine is—

Q. Well, don't you think—don't you think that

should have been predicated on the experience--on our experience figure of January 1st to May 6th?

A. No, sir, because from August 19th some of these machines had been repaired, others had not.

BY MR. HIRSCH:

Q. No, but Judge Kirkpatrick means, could you take the production of the machines as they actually ran from January 1st to May 6th, and predicate your allocation on that production?

A. Well, if was on that same basis, because we used the normal dozens which that particular type of machine should be able to produce.

BY THE COURT:

Q. Yes, but where did you find out the normal dozen?

A. That was obtained from the plant superintendent.

Q. At full capacity?

A. Normal capacity, yes, what the machine should be able to—

Q. Don't you think it should be on the actual experience capacity from January 1st to May 6th, because, you see, we are starting with that as a yardstick to apply, and if the—I don't know whether that represents full-time capacity for every machine.

MR. HIRSCH:

I don't think it does, sir. I think it represents normal capacity, which contemplates peaks and valleys of production.

THE COURT:

Well, all right, I will take it as you have got it.

BY THE COURT:

Q. You have the total of eighty-two thousand. Now, what percentage of capacity?

A. We find the deficiency was about 21.88 per cent.

MR. SIMONS:

Oh, I didn't get that.

THE WITNESS:

21.88 per cent.

BY MR. HIRSCH:

Q. Deficiency?

BY THE COURT:

Q. Deficiency?

A. Deficiency.

BY MR. SIMONS:

Q. What do you mean by "deficiency"?

BY THE COURT:

Q. In other words, that is the number of days, or the number of dozens, or the number of dollars—I don't care which—that they were under normal during that period?

A. Yes.

THE COURT:

And that is assuming that that was entirely due to the strike, or to the damaged condition of the machines, and I believe there is testimony to that effect.

BY MR. HIRSCH:

Q. And what is the figure, therefore, that—

A. Therefore, the claim is \$18,159.87.

Q. Now, that represents the portion of fixed and carrying charges, expenses and salaries which necessarily had to be incurred and which was not compensated for by the ability of the company to produce.

THE COURT:

That is right.

A. That is right.

MR. HIRSCH:

Now, you may cross-examine.

MR. SIMONS:

If Your Honor please, may I ask that that latter testimony be stricken from the record? I think it is purely conjectural. It takes into consideration items that we don't know about except as mentioned collaterally in the other testimony, and I don't think it is substantial for consideration by the jury.

THE COURT:

No, I guess it is all right, provided his normal figure is right.

BY THE COURT:

Q. Now, you took 21.88 per cent of something?

A. Yes, sir.

Q. Now, what was the something that you took 21.88 per cent of?

A. I will explain that. We had a total of 359 machines in the plant, that is, leggers and footers, and we took each machine and applied a percentage each week from August 19th to October 29th.

Q. That is how you got your twenty-one per cent?

A. Yes.

Q. But what is it twenty-one per cent of?

A. It is twenty-one per cent of what would have been normal production.

Q. Well, how do you know that it would have been normal production? Who told you that? Where did you get that figure from?

A. That is the normal capacity of the machine.

Q. Well, who told you that? You don't know anything—

A. No.

Q. —about machines?

A. That was given me—

Q. Where did you get that figure?

A. —by the plant superintendent.

Q. Well, he just came and told you that was normal capacity?

A. Yes, sir.

Q. So you took that figure?

A. Yes, sir.

Q. Well, I don't know what "normal capacity" means. See, we don't know. If it is full-time working capacity I think it is too large—rather, it is too little, as a matter of fact. If you figure on deficiency:

A. We are only claiming—that is true, only twenty-one per cent as deficiency. The remaining machines of that average had been repaired and were capable of being operated.

THE COURT:

All right. Well, we will have to let it go at that and find out from Mr. Struve what the

figure was and how he got the normal operating capacity of those machines. It is all right.

Now, go ahead and cross-examine, Mr. Simons.

MR. SIMONS:

I am renewing my objection.

THE COURT:

Yes.

Cross Examination (Continued)

BY MR. SIMONS:

Q: May I see these papers?

A: Certainly.

Q: Where is the item that you have for—

A: Overhead charges?

Q: —general expenses, fixed charges?

(The witness indicated the figure.)

MR. SIMONS:

If Your Honor please, there are a large number of items on here which in my opinion I don't think should be given consideration. I would like to move on a number of these and ask that they be stricken from the record.

THE COURT:

I don't know what they are. They haven't been called out yet.

MR. SIMONS:

Well, now—

THE COURT:

Well, you have to examine him on them and find out just what they are.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. Now, you have superintendence, six thousand dollars. Are you familiar with what that is, how that is made up?

A. That is the salary of the superintendent.

Q. Who is the superintendent?

A. Mr. Struve.

Q. That is just that one salary?

A. Yes, sir.

Q. And that covers a period from May 6th to August 19th. How many weeks is that?

A. That is eight weeks, I guess—no, it is more than that. What is that period there?

Q. It is May 6th—

MR. HIRSCH:

How many days did you say it was before?

Fifteen and one-half weeks, fifteen weeks.

BY MR. SIMONS:

Q. Now, you have been examining these books for a long period of time, haven't you?

A. I have.

Q. And Mr. Struve gets a regular weekly salary?

A. Yes, sir.

Q. And he is the superintendent in the plant?

A. Yes, sir.

Q. During this period of time the plant was closed?

A. That is correct.

Q. Now, Mr. Struve wasn't in the plant at all during that time?

MR. HIRSCH:

"Up to August 19th?"

MR. SIMONS:

Yes.

MR. HIRSCH:

Certainly he was.

BY MR. SIMONS:

Q. When?

A. I don't recall when Mr. Struve came into the plant. I can't testify to that.

MR. SIMONS:

If Your Honor please, I am just wondering what would be the easiest way of handling, whether to take each item up as I go through and make my motion, or wait until I am completed with them?

THE COURT:

Well, any way you want to do.

MR. SIMONS:

Take, for instance, The superintendence. There is a superintendence charge of six thousand dollars. I don't think that is a fixed charge when the plant is closed.

THE COURT:

All right, make your motion.

MR. SIMONS:

I therefore move that that item be stricken from the record.

THE COURT:

It is overruled.

BY MR. SIMONS:

Q. Now, you have an item of factory supervision.

THE COURT:

I tell you what, I can save you trouble, it is understood that you move to strike out each and everyone of those items, and they are all overruled unless I change my ruling. That will protect you and save time.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. Now, factory supervision?

A. That represents the salaries of foremen and foreladies which—

Q. Do you have a list there?

MR. HERSCHE:

Let him finish.

BY MR. HERSCHE:

Q. Go ahead, which what?

A. Which in the first part, from May 6th to some date—I am not definite what date, but I think until

the date that they came in—was only one-half of their regular salaries.

BY MR. SIMONS:

Q. Do you have the list, have the schedule of those salaries?

A. There is a schedule, yes.

Q. Where is that schedule?

A. We have them here. I have it among my papers, and also in the salaries.

Get me the work papers there.

BY MR. HIRSCH:

Q. What book do you want? Do you want your bag?

A. Yes.

(Papers were handed to the witness.)

THE WITNESS:

What period is that?

MR. SIMONS:

May 6th to August 19th.

THE WITNESS:

I haven't got my schedule in here, I am afraid, I can get that here. I thought I had it in my papers, but they aren't—I have the total for the year.

BY MR. HIRSCH:

Q. What do you want, your own working papers?

A. Yes.

Q. Do you want us to phone the office?

A. Yes, you can.

BY MR. SIMONS:

Q. Do you have the pay-roll sheets of the company here to show the pay-roll from May 6th to August 19th? It would be included on that pay-roll sheet?

A. Yes, it should. It should be on that pay-roll sheet.

(Discussion off the record.)

BY MR. SIMONS:

Q. Do you have it in your working papers anywhere?

A. I have it in my working papers, but it isn't here. I will call the office.

MR. HIRSCH:

Do you want me to call somebody?

(Discussion off the record.)

THE WITNESS:

Mr. Steeple, can you call the plant? Get Mr. Steeple to call the plant to get the salary book down here. This doesn't include it. We have to start with May 6th. This starts with July 2nd.

BY MR. SIMONS:

Q. Now, what record do you have there?

A. I have the actual salary sheets from July 2nd.

Q. Well, suppose I look at those for a minute.

A. Yes.

Q. Is this the complete salary on the pay-roll sheet of the factory for the week ending July 16th?

A. That is the complete salary pay-roll for the week ending that date.

Q. July 16th?

A. Yes, sir, that is the salary pay-roll.

THE COURT:

Well, gentlemen, can't you make a little better time here?

MR. SIMONS:

If Your Honor please, I don't see how we can. We have this situation. There have been items of pay-roll presented before that we have had, and been told that that is part of the expenses of that period of time. Now, here is another pay-roll coming along, and in quite a substantial sum, and we have got to check the items to see just where they are. I don't relish this delay at the present time and holding up Your Honor on the matter.

THE COURT:

Well, I am sorry, but I don't think we can sit here and wait while you check it up. I think you will have to go ahead and cross examine as best you can. There was no concealment about this fact, was there?

MR. SIMONS:

It isn't a question of any concealment, except we have never seen these figures before. These are some of the matters that we didn't see and didn't know about.

THE COURT:

Well, what do you suggest? I don't want to be in any way unfair to you.

MR. SIMONS:

We don't know how some of these items are made up. I mean, there are just total figures

here, and that is all. I would like to get the component parts and see what they consist of.

THE COURT:

Well, can't you ask the witness that?

MR. SIMONS:

Well, he doesn't know, because all he has here is the figures, he doesn't remember the details.

MR. HIRSCH:

He will have his papers shortly. He will have all the detail. If we can go on to another phase of the direct examination on cross examination I think by the time Mr. Simons would finish with that he would have his working papers on these items, and we could proceed quickly with this.

BY MR. SIMONS:

Q. The question of factory supervision, who would be included in that, if you know?

A. I believe it is all the foremen and foreladies.

Q. Who were in the plant prior to May 6th?

A. That is correct.

Q. And who were not working during that period of time from May 6th to August 19th?

A. Some were working and others were not, I presume, I mean.

Q. Well, did you have the charge here, were they or were they not working?

A. Some were working, I couldn't tell definitely unless I saw the names on the salary list to determine which were working.

Q. Well, if they were working would you charge it to this account?

A. They would—no, sir, because those which were working, they are the ones which we disallowed, took out, because they were covered in the other claim.

BY MR. HIRSCH:

Q. On the repairs?

A. On the repairs.

BY MR. SIMONS:

Q. Therefore, this item of \$3264.25 is for those who were not working?

A. That is, I would say that is correct, as far as I know.

Q. And if you would charge under factory supervision, they were factory foremen?

A. That is correct.

MR. SIMONS:

Now, subject to checking that further, if Your Honor please, I make my same motion at this time.

MR. HIRSCH:

You don't have to.

MR. SIMONS:

All right.

BY MR. HIRSCH:

Q. Were they the people that were paid half-rate?

A. Yes, sir.

MR. HIRSCH:

They were paid half-rate.

BY MR. SIMONS:

Q. May I just go back to the item of superintendence? You said that that was for Mr. Struve?

A. Yes, sir.

Q. And checking your pay-rolls here, you have Mr. Struve down at two hundred dollars a week on these pay-rolls, is that correct?

A. That is correct.

Q. And you have charged up there six thousand dollars for a period of approximately fifteen weeks?

A. Well, there is—there is another—

Q. That would make it four hundred dollars a week, wouldn't it?

A. Yes, well, there is another item of salary that Mr. Struve gets in addition to what is on that pay-roll, that doesn't appear on that pay-roll at all. You asked me what was on the pay-roll, that is correct; the two hundred, but there is an additional amount that Mr. Struve gets direct that doesn't enter in the pay-roll, into that particular pay-roll.

Q. Well, what is it chargeable to?

A. Charged to salaries, in the ledger.

Q. Well, do you have another pay-roll sheet besides this one?

A. No, there is no other pay, it is just weekly checks that are drawn.

Q. And that is charged to the pay-roll account?

A. To this salary account, yes, sir.

Q. Now, what is your question of indirect labor?

A. That is mostly maintenance men, carpenters, and so on.

Q. Carpenters?

A. Carpenters, men around the plant, maintenance men, watchmen and maintenance men.

Q. And were those men paid during the time that they were not at work?

A. I couldn't answer that question.

Q. Well, you have an item of \$5,098.82 for indirect labor. Does that represent payments of money to people who were not working during all that period of time?

A. I couldn't answer that question without looking at the records.

MR. HIRSCH:

There were some watchmen there, some watchmen were working.

MR. SIMONS:

Well, you have charged us for all the watchmen that were working.

MR. HIRSCH:

Not under damage.

MR. SIMONS:

Oh, yes.

(Discussion off the record.)

THE COURT:

The witness says he doesn't know.

BY MR. SIMONS:

Q. Do you know what mill supplies represents?

A. Just merely what they indicate, mill supplies, just miscellaneous items.

Q. Well, do you know anything about that item?

A. Only insofar as that they represent purchases which we vonched at the time of making the audit. What they represent I couldn't say.

Q. Do you have the breakdown of that item?

A. There is a charge in the records, and we would verify by the actual invoices, if you want to prove it.

Q. Well, do you have the breakdown on that here at the present time?

A. Yes, we have the ledger here, and that should tie in with that paper.

Q. Well, can we check that and see what it is?

A. Yes, I believe you can.

MR. HIRSCH:

Suppose you come down here and use your books here. Keep your voice up so everybody hears you and testify from down here. Keep your voice up so everyone can hear you.

(Discussion off the record.)

THE WITNESS:

We have in the mill supplies, Your Honor, we charge in smocks and other items. Mr. Simons is asking why some of these credits appear in the account.

MR. SIMONS:

I am first asking what the debits to that account are.

THE WITNESS:

The debits to the account?

MR. SIMONS:

I mean the charges, the items for expense. You have here just total sums.

THE WITNESS:

Yes, and they are supported by the invoices.

BY MR. SIMONS:

Q. Well, can we see the invoices and know what it is, or can you tell us what it is?

A. Well, I will have to look in the voucher register.

Q. Do you know the nature of the items?

A. Nothing more than they represent general mill supplies, Mr. Simons.

Q. Well, what do you mean by mill supplies, what does that mean?

A. Hardware supplies, electrical supplies, anything of that nature, general mill supplies, and smocks for the girls, and overalls, and things of that sort which they in turn sell to the girls and the men, and then, of course, these credits appear in the account.

Q. Well, you had no occasion to buy any of that from May 6th to August 19th?

A. Well, let's see. No, there would be nothing in there, there is only one item in there in August, for \$1,222.86, and the only way we could find that out—probably that is the items bought from August 19th on up to the end of August, for that particular month, because there was nothing bought during the shut-down period.

Q. Well, you have, in July you bought \$181.46, June, \$15.00, in May \$1,303., now, what does all that represent?

A. Well, as I just got done saying, it represents general mill supplies that they bought. In May they would no doubt be buying supplies, which they paid for in May, ended up in May, which represented purchases for April.

Q. Can you look at your vouchers and let us know what that is?

A. The voucher register wasn't brought down here and we haven't the bills here.

MR. SIMONS:

If Your Honor please, it seems to me that that is an item that is certainly not a proper charge here.

MR. HIRSCH:

These are all items which were available to the accountant for the defendants when he made his examination. Whether he examined them or not I don't know, but they were all available to them.

MR. SIMONS:

If Your Honor please, I don't like these constant assertions of what was available to us. Mr. Ladenheim is here. I would like to ask him whether or not he ever examined any of these vouchers or saw them.

MR. HIRSCH:

I am not interested in whether he examined them. They were available.

MR. SIMONS:

We weren't given everything. We were shown certain things, and everyone had fifteen people around to make sure we hadn't any more.

THE COURT:

Is there an objection?

MR. SIMONS:

I object to that item of mill supplies as not being properly identified, as not being a proper item of charge.

THE COURT:

Well, do you think the purchase of overalls is an item of loss, overhead, and that sort of thing?

MR. HIRSCH:

No.

THE COURT:

I don't, either. I don't see why you put all these picayune items in here and boost this thing up with a lot of doubtful stuff. There is plenty that can be easily identified. What on earth did you put in buying overalls for?

MR. HIRSELF:

Because the accountant when he prepared this prepared all the charges that they incurred during the time they were shut down.

THE COURT:

Well, I know, but it obviously is not an item of damage.

BY MR. SIMONS:

Q. The next item you have is taxes and water rent, \$3,672.58.

A. That represents the proportionate share.

THE COURT:

I will grant the motion and strike that item entirely.

MR. HIRSCH:

How much is that item?

THE COURT:

I don't remember.

MR. SIMONS:

\$3,672.58.

THE COURT:

\$3,672.58. That is mill supplies.

BY MR. SIMONS:

Q. The next item is depreciation, \$60,999.67.

MR. HIRSCH:

Explain that:

BY MR. SIMONS:

Q. Well, now, that is depreciation that you have charged off on your—of the book value?

A. Yes, sir.

Q. As they appeared on the books, the book figures, purchase figures?

A. That is correct.

Q. For your plant, equipment, furniture, fixtures,

A. That is correct.

Q. —supplies?

A. No, not supplies.

Q. Didn't include supplies there?

A. No, sir.

Q. Now, those, most of the—most of the machines, have been purchased when?

A. I couldn't—pardon me, I couldn't answer that offhand; various dates.

BY THE COURT:

Q. Is that the same rate of depreciation charged while the plant was in use?

A. Yes, sir.

THE COURT:

Well, I don't believe that is an item, is it?

MR. HIRSCH:

Yes, sir.

MR. SIMONS:

I don't think it is, if Your Honor please.

MR. HIRSCH:

If Your Honor please; depreciation enters into every profit and loss statement of every business. It is a proper, usual and customary item of expense.

THE COURT:

Oh, I understand that, but—

MR. HIRSCH:

Now, if we weren't able to overcome the depreciation which we would ordinarily take by doing business and receiving income—because when you figure your profit and loss, when you are running, you deduct depreciation from whatever the gross profit is, it is an item of expense—if we weren't able to operate, that is a properly chargeable item. That is what we had to charge ourselves, and always charge ourselves with, when we were running, and, therefore, we have the right to recover it now when we have no counterbalancing income.

THE COURT:

All right, how much is it?

MR. SIMONS:

If Your Honor please, may I just say this? At the time of the question of the repairs to the machines, when we discussed matters of de-

preciation, the argument then was, "This is only a book entry".

MR. HIRSCH:
That is right.

THE COURT:

Does this include depreciation on the machines?

MR. SIMONS:

On the machines. That is the major portion of this depreciation.

THE COURT:

The damaged machines were repaired, weren't they?

MR. HIRSCH:

Yes, sir, but the original cost, the repairs as such were not capitalized, naturally, but the original cost of the machines, if there was any residual value there, that was depreciated at the usual rate.

MR. SIMONS:

In other words, Your Honor, we are being charged with depreciation on total purchase price of ten per cent a year.

BY MR. SIMONS:

- Q. That is your depreciation?
- A. Eleven per cent.
- Q. What per cent?
- A. Eleven.
- Q. Eleven per cent a year.

MR. SIMONS:

In addition to that we are also being charged

with the cost of putting these machines in repair and possibly putting them in at least as good or maybe better condition than before. I don't think this is a proper charge.

MR. HIRSCH:

That is fully proper. There should be a double charge, for the reason that after we depreciate it they come along and damage it, and we have to put it back in the same condition it was. That is extra expense.

MR. SIMONS:

They didn't even take depreciation on the then condition value of the machines, they took it on the cost. I think it is an unfair charge.

MR. HIRSCH:

So long as he charged it the way he did in other years I think it is a proper charge.

THE COURT:

I will overrule the objection.

MR. SIMONS:

If Your Honor please, may I go further than that?

BY MR. SIMONS:

Q. Do you have your plant ledger here?

A. Yes, sir.

Q. May I see that plant ledger, please?

THE COURT:

You will note, however, Mr. Hirsch, that this coal company case refers to depreciation through disuse.

MR. HIRSCH:

Pardon me?

THE COURT:

This coal company case refers to unavoidable depreciation through disuse. Now, this is the same depreciation, that has been charged all along?

MR. HIRSCH:

This is, I think, the same type.

THE COURT:

No, this is an item of depreciation caused by disuse. That was the corrosion and all that—

MR. HIRSCH:

Let me say this, Judge Kirkpatrick, under accounting law—let me ask the question of the witness.

BY MR. HIRSCH:

Q. What kind of a charge is depreciation?

A. It is a reduction in the value of an asset from wear and tear.

Q. No; but what is it known as? Is it a fixed charge?

A. It is a fixed charge.

MR. HIRSCH:

It comes under accounting law under fixed charges. Depreciation is a usual and customary fixed charge. It appears in every accounting statement you have ever looked at.

THE COURT:

Oh, I understand that, it isn't necessary to advise me of that fact, but it is a question

whether it is an item of damage here. However, I am going to allow it. How much was it?

MR. SIMONS:

Well, now, if Your Honor please, I want to ask some further questions on this matter of depreciation before you—

THE COURT:

Would you mind telling me how much it was?

MR. SIMONS:

\$60,999.67.

THE COURT:

All right, now, go ahead.

BY MR. SIMONS:

Q. This is your plant ledger?

A. That is right.

Q. In which you show the original invoice or the cost price of the machines?

A. That is right, but this is the transfer. Have you the other book, Mr. Steeple?

Q. What is this?

A. That is the transfer, just machines sold or disposed of.

Q. Well, but you had these machines?

A. Yes, but it depends on what date they were sold.

Q. Here is March 20th. I don't know what date that is.

A. That would be out at that time, then.

Q. Of what year?

BY MR. HIRSCH:

Q. Is this the book you want?

A. Yes. Here it is (indicating).

BY MR. SIMONS:

Q. Now, this reserve for depreciation which you set up was eleven per cent that you charge each year against a reserve account, so that at some time in the future if you have to replace these machines you will have been charging off a certain amount each year instead of charging it off at one time?

A. That is correct.

Q. That doesn't mean that it is actually depreciated that amount, but you are merely setting a reserve for what is likely to happen in the future?

A. We believe that the machines—that the rate we are using is an adequate rate, and it is a rate which was established by the Internal Revenue Department in 1934, by the Engineering Section.

Q. They allowed you eleven per cent per year, or they figured the lifetime of that machine as approximately ten years?

A. Nine to ten years.

Q. Nine to ten years. Do you mean to say, therefore, at the end of nine to ten years your machines are fully, totally depreciated and of no value whatever?

A. They are fully depreciated, but I wouldn't say they have no value.

Q. Now, you have figured the value of those machines and have sold some of those machines during 1937 and 1938, is that correct?

A. That is correct.

Q. And what did you get for those machines when you sold them?

A. To the best of my—

Q. What is the average price?

A. I would say approximately thirteen hundred to fifteen hundred dollars.

Q. And some machines you got as high as twenty-three hundred dollars for?

A. That may be correct; I don't know.

Q. And you figure that— you, of course, didn't sell your best machines?

A. I don't know what type machines that were sold.

Q. And you have other machines of like character in the plant?

A. I presume so.

Q. Now, you take this number 3 footer, it was purchased on—

BY THE COURT:

Q. Is that—pardon me—is that sixty thousand on the entire plant as well as the machinery?

A. That is on everything.

MR. HIRSCH:

That is everything.

BY THE COURT:

Q. Are you figuring eleven per cent on everything?

A. Oh, no.

Q. I didn't think so.

BY MR. SIMONS:

Q. You mean that includes depreciation on the building?

A. That includes depreciation on the building.

Q. What depreciation did you charge on the building?

A. I think about two per cent.

Q. And what value did you carry the building for?

A. I would have to look that up. I think it is around eight hundred and some odd thousand.

Q. What is the building assessed for for taxation purposes?

A. I don't recall offhand.

Q. Approximately, or can you find out exactly for me.

MR. HIRSCH:

Something like three hundred and eighty-five.

MR. SIMONS:

Three hundred and eighty-five thousand?

MR. HIRSCH:

I think that is the answer.

BY MR. SIMONS:

Q. And you are charging depreciation, of course, on your eight hundred thousand?

A. On the original cost, yes, sir.

Q. And how old is that building?

A. That I don't know offhand. There was three buildings erected there. I don't know the exact dates.

Q. And how old is the oldest building?

A. That I couldn't say offhand.

Q. Give us an idea.

A. No, I haven't the slightest idea.

Q. Some of those buildings have been up possibly more than twenty years, haven't they?

MR. HIRSCH:

The oldest building was taken over by us in 1922. That is all we know.

MR. KATZ:

Is he the witness?

MR. HIRSCH:

I am trying to give information.

BY THE COURT:

Q. Pardon me, this item of depreciation of sixty thousand, is that in August 19th to October 29th, or is it also the entire item from May 6th to October 29th?

A. It is that period, whatever is on that sheet, Your Honor, May 6th to—

Q. May 6th to August 19th?

A. Yes.

MR. SIMONS:

May I just continue with the machines, and I will come back to the real estate after that, if Your Honor please.

BY MR. SIMONS:

Q. Now, number 3, machine number 3, a footer, was purchased on June 27, 1929, for sixty-two hundred dollars. You have added to that the freight, hauling, and the erecting and several other items, and you have depreciated on that machine as of December 31, 1936, \$5,757.78?

A. Yes, sir.

Q. Now, in previous years you had been charging \$357.98 depreciation on that machine per year?

A. If that is what the records show.

Q. That is what the records show, and during 1936 and also during 1937 you charged \$715.96?

A. May I look at that?

Q. Certainly you may. It is your records.

A. That is expense, that is right.

MR. HIRSCH:

Mr. Langer, keep your voice up.

(Discussion off the record.)

THE WITNESS:

That is still \$715.96. The thing was, in those days we put depreciation on the books semi-annually.

MR. SIMONS:

Oh, I see.

THE WITNESS:

And it was only \$357. This is the total for the year, \$715.

MR. SIMONS:

I see.

BY MR. SIMONS:

Q. Now, that machine was depreciated about over ninety per cent on the 31st day of December, 1936, is that correct?

A. If the records show that.

Q. Yes, and despite that fact you continued charging depreciation after that in 1937 and also in 1938?

A. We don't over-depreciate. As soon as the machine is fully depreciated we cease charging depreciation.

Q. But the machine is still in your plant?

A. Still in the plant.

Q. And the machine in your opinion is worth at least thirteen to fifteen hundred dollars.

MR. HIRSCH:

He doesn't know? I object to it.

BY MR. SIMONS:

Q. Well, those were the sales that you made?

MR. HIRSCH:

The witness doesn't know what that machine was. I object to that.

THE COURT:

It is no ground that the witness doesn't know; if he doesn't know he can say so. I don't know whether he knows or not. That is not an objection to the question.

BY MR. SIMONS:

Q. Now, the same applies also to your matters of the equipment that you add to the machine?

A. Yes, sir.

Q. What do you call that?

A. Attachments.

Q. Attachments, and the attachments on the machine are fully depreciated also, aren't they?

A. In cases where they have been fully depreciated.

Q. Well, we are talking about this particular machine. That is \$363.93?

A. Yes, it was fully depreciated in 1938.

Q. That is right, in 1937 it was \$297.44, depreciated?

A. At the end of 1936 the total reserve for depreciation was \$206.00.

Q. That is right, in 1937—

A. In 1937 we charged in \$90.98.

Q. So that that was fully depreciated?

A. It became fully depreciated in 1938, not before. It wasn't depreciated in 1937.

Q. Now, take machine number 4, which is also a footer. You have a cost there of \$6,592.75, including all the attachments and invoice price of the machine, and on December 31, 1936 that was depreciated \$5,004.23, and equipment of the value of \$369.00—for attachments, rather, the value of \$369.45 was depreciated to the extent of \$209.57. Is that machine still in the plant?

A. To the best of my knowledge, yes.

Q. Is it still being used?

A. To the best of my knowledge.

Q. And from the records and books and papers and whatever you know, is it as good as those machines that were sold?

A. I can't testify to that.

Q. It is in use at the present time.

A. To the best of my knowledge.

Q. —as a machine?

A. —it is being used.

Q. And number 5, also a footer, you have a total cost there, including all your various items, of six thousand, five hundred and eighty-nine, \$6,589.00, and on December 31, 1936, that was depreciated \$5,640.20. That is almost ninety per cent depreciation.

THE COURT:

Well, do you think it is necessary to go through every machine?

MR. SIMONS:

Well, I wanted to get enough of them on just to indicate—

THE COURT:

Well, there is plenty now. They took a straight line depreciation right from the beginning to the end. That is obvious.

MR. SIMONS:

We have checked items of depreciation. We found there are innumerable machines totally and entirely depreciated in 1936, December 31st. I wanted to get to one of those machines.

MR. HIRSCH:

All right, and if you can show us where we took additional depreciation after they were depreciated one hundred per cent—

MR. SIMONS:

I can't show you anything.

MR. HIRSCH:

I will withdraw that item.

MR. SIMONS:

I want to show those machines are still in use at this time, even though they are totally depreciated, and, therefore, this is not a fair charge.

THE COURT:

I think that would be agreed.

MR. HIRSCH:

I agree to that thoroughly.

BY THE COURT:

Q. But none of those are included in this depreciation charge?

A. No, any machine fully depreciated prior to 1936 has no depreciation in that figure.

Q. Yes.

A. We haven't over-depreciated.

MR. SIMONS:

But you are still using those assets,—

MR. HIRSCH:

Admittedly.

MR. SIMONS:

—and they still have a value.

MR. HIRSCH:

Admittedly.

MR. SIMONS:

May I, therefore, state for the record that the records of the company will indicate that practically all of their machines have been depreciated to possibly eighty to one hundred per cent.

BY MR. SIMONS:

Q. Is that a fair statement?

A. I wouldn't know unless I check it.

MR. SIMONS:

Well, I have.

THE COURT:

Well, a very large number of the machines.

BY MR. SIMONS:

Q. And the same machines for which you charged

depreciation are still in use at the plant at the present time?

A. Repeat that again, please.

Q. The same machines for which you charge depreciation in that period from May 6th to August 19th are still in use at the plant?

A. No, I wouldn't say that, because some of those machines might have been sold.

Q. I see.

A. Since that time.

MR. SIMONS:

If Your Honor please, I again renew my objection, to strike out the matter of depreciation. I feel that, although it has been carried here purely as a bookkeeping entry and nothing more, there is no indication as to the extent of the depreciation, I feel that this item is quite excessive and would justify the consideration—

THE COURT:

The only question is whether they charged too much depreciation.

MR. SIMONS:

That is it.

THE COURT:

That is about all.

MR. SIMONS:

We have proved—

MR. HIRSCH:

And that is—

MR. SIMONS:

Do you mind if I finish?

MR. HIRSCH:

Go ahead.

MR. SIMONS:

We have proved prior to this time they depreciated these machines practically eighty per cent, ninety per cent, in some cases they say one hundred per cent. Those machines it has been testified are still worth thirteen to fifteen hundred dollars.

THE COURT:

That is all I have in mind. It is only a question whether their rate of eleven per cent is too high.

MR. SIMONS:

Even though the rate of eleven per cent may be proper, that merely means the Government says to you you have the right to anticipate possible depreciation and obsolescence of those machines during a period of nine years, nine or ten years, and you may charge that off against your profits as an anticipated possible loss. That does not mean merely because you do that as a bookkeeping entry that that is an actual and definite loss, because in this case we show it is not. Here they have used these machines for ten years, now, and more, and they are still in use, and still have a value of thirteen hundred dollars, which is approximately twenty per cent of the value of the machines.

THE COURT:

But they have not taken in this item any depreciation on any machine has been fully de-

preciated, that is understood, the witness so testified, so I will overrule your objection. You go ahead.

MR. SIMONS:

Grant me an exception.

BY MR. SIMONS:

Q. Now, how about your real estate? Do you have a breakdown of the total depreciation for the machinery and equipment?

A. Yes, sir.

Q. Where is that?

A. It is in the plant ledger.

Q. I don't mean the details, I mean the total sum figure which you have taken.

A. We take it right from the books.

Q. You have depreciation somewhere in your books. Is this your general ledger (indicating)?

A. Yes.

Q. You could find depreciation in your plant and equipment, couldn't you?

A. Yes, on the—

Q. This is just the details, isn't it?

MR. HIRSCH:

You mean of the sixty thousand how much of it represented plant and how much of it represented equipment?

MR. SIMONS:

That is right.

MR. HIRSCH:

Give him the total of that.

BY MR. HIRSCH:

Q. How much was oil equipment and how much on the plant, in dollars? Read it into the record if he wants it.

A. \$7,704, that is for buildings; and \$53,295.67 for machinery and equipment.

MR. SIMONS:

Now, wait a second. Of course, our contention on the matter of machinery and equipment is directed to the sum of \$53,295.67.

BY MR. SIMONS:

Q. Now, on the matter of the building, you have deducted two per cent depreciation on the value of eight hundred thousand dollars?

A. Of building, that is correct, yes.

Q. Do you have your building account here.

A. Yes.

Q. Is that in your general ledger?

A. Yes, it is in the general ledger.

Q. May I see it?

A. Yes, sure.

(The witness produced the book.)

BY MR. SIMONS:

Q. Now, where is your reserve for depreciation on the building?

A. It is all in the one account, reserve for depreciation is all in one account. It is combined, the whole thing.

Q. No, wait a second, where?

A. Under reserve for depreciation.

Q. You don't mind if I try to find it here?

A. It will be under the R's.

- Q. Reserve for contingencies?
- A. That (indicating).
- Q. Well, how can you tell what it is?
- A. I can give you the breakdown.
- Q. You don't have the building in here?
- A. Yes, it is all in here, the whole thing, the whole thing (indicating).

THE COURT:

What are you trying to ascertain now?

MR. SIMONS:

I want to get the amount of depreciation charged off to the building.

BY THE COURT:

Q. Well, what do you think it was?

MR. SIMONS:

Here it is:

BY MR. HIRSCH:

Q. What is the figure?

BY MR. SIMONS:

Q. Now, you have charged on your books and records the value of the building as \$872,663.66?

A. That is correct.

Q. Now, as of December 31, 1937, which includes that whole year, and which are the figures that you have available at the present time,—

A. That is right.

Q. —you don't have the others, you have charged off as reserve for depreciation, \$306,519.47?

A. Over the period of years.

Q. Over the period of years, and your rate of depreciation is three per cent for the garage, three

per cent on the old building, two and one-half per cent on buildings 1, 2 and 3, five per cent on the oil heater, and five per cent on boilers and electrical equipment, is that it?

A. That is probably it.

THE COURT:

Well, now, what do you want to show by all this?

MR. SIMONS:

Well, now, just one more question—

BY MR. SIMONS:

Q. That property is assessed for approximately three hundred and eighty-five thousand dollars; is that right?

A. I have no idea what the assessed valuation is.

MR. SIMONS:

Well, I simply want to show the same as the question of the plant, this is merely a book value—

THE COURT:

All right.

MR. SIMONS:

—of anticipated possible contingencies, without being a proper charge that should be chargeable to us.

THE COURT:

All right.

MR. SIMONS:

And I, therefore, ask for that reason that it be stricken from the record.

THE COURT:

Motion denied.

BY MR. SIMONS:

Q. Insurance, \$3,186.15.

A. That is fire insurance and—well, various insurance policies which they carry. I can't enumerate them all, but the usual type.

MR. SIMONS:

What is your thought on that, if Your Honor please, on the matter of insurance?

THE COURT:

All right; I think it is all right.

MR. SIMONS:

I didn't get what you said.

THE COURT:

Mr. Hirsch has persuaded me, or, rather, convinced me that it is a proper charge. I think he is right about it. I didn't think so at first, but I think now that it is.

MR. SIMONS:

Well, I want to check the policies.

BY MR. SIMONS:

Q. Do you have a record of your insurance here?

A. I don't believe so.

Q. Do you have any way of telling us how you arrived at the figure of \$3,186.00?

A. Yes, I can give you that.

Q. Do you have your 1937 statement?

A. Yes, sir, I think it is with that.

Q. This is the one you were reading from before, is it not?

A. Yes.

THE COURT:

Well, I think we can recess for lunch until two o'clock.

(Recess, 12:30 until 2 o'clock P. M.)

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END OF VOLUME II